

# EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION  
CASE NO.: 1:15-CV-02451-SCJ-CMS

JILL ALTMAN, Individually and on  
behalf of a class,

Plaintiffs,  
vs.  
WHITE HOUSE BLACK MARKET, INC.,  
and DOES 1-10,

Defendants.

VIDEOTAPE DEPOSITION OF

DAVID M. OLIVER

Thursday, July 20, 2017  
9:31 a.m. - 12:42 p.m.

Becker & Poliakoff, P.A.  
12140 Carissa Commerce Court, Suite 200  
Fort Myers, Florida 33966

Stenographically Reported By:  
Amory Ranck, FPR  
Florida Professional Reporter

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Videotape Deposition Taken Before Amory Ranck,  
Florida Professional Reporter and Notary Public in  
and for the State of Florida at Large  
in the above cause.

\* \* \* \* \*

THE VIDEOGRAPHER: All right. Here begins  
the videotaped deposition of David Oliver at  
9:31 a.m. on July 20th, 2017.

THE COURT REPORTER: Please raise your  
right hand.

Do you solemnly swear or affirm under the  
penalties of perjury that the testimony you are  
about to give will be the truth, the whole  
truth, and nothing but the truth?

THE WITNESS: I do.

Thereupon:

DAVID M. OLIVER,  
having been first duly sworn, was examined and  
testified as follows:

DIRECT EXAMINATION

BY MR. DWYER:

Q. Good morning, Mr. Oliver.

A. Good morning.

Q. My name is Angus Dwyer. I'm an attorney  
at Spencer Fane. I'm counsel for Plaintiff in this

1 (Pages 1 to 4)

1 action. Thank you for joining us.

2 Can you state your full name for the  
3 record, please?

4 **A. Yes. David Michael Oliver.**

5 Q. Thank you. Mr. Oliver, have you ever been  
6 deposed before?

7 **A. Yes.**

8 Q. Okay. So you're familiar with the basic  
9 background. Obviously let me -- let me finish my  
10 question first, then you can answer. Answer orally.  
11 Obviously you've just been sworn in, so please give  
12 truthful answers. If you need to take a break, just  
13 let me know.

14 I know we're on something of a tight  
15 clock, I think, because of maybe your counsel's  
16 travel schedule, but, you know, we'll try to, you  
17 know, we'll take breaks as appropriate.

18 First, let's begin. Can you describe for  
19 me your educational background?

20 **A. Yes. I have a bachelor's of accountancy**  
21 **from the University of Oklahoma or it's a BBA with a**  
22 **major in accounting, actually, but University of**  
23 **Oklahoma.**

24 Q. When did you graduate from the University  
25 of Oklahoma?

1 **A. 1979.**

2 Q. Do you have any post-graduate degrees?

3 **A. No.**

4 Q. Okay. So now let's walk through your  
5 professional experience. What was your first job  
6 after you graduated from Oklahoma?

7 **A. I worked in public accounting with Arthur**  
8 **Anderson & Company for nine years.**

9 Q. Okay. So that was from 1979 to 1988; is  
10 that correct?

11 **A. Yes.**

12 Q. What were your responsibilities in that  
13 position?

14 **A. I worked in the audit practice auditing**  
15 **both private and public companies.**

16 Q. Okay. What was your next job?

17 **A. I was the controller -- excuse me. I**  
18 **hired on as the assistant controller with the Vons**  
19 **grocery companies in Southern California and I was**  
20 **there, I believe, nine years.**

21 Q. And what were your responsibilities at  
22 that job?

23 **A. When I left I was the vice president**  
24 **controller basically overseeing the core accounting**  
25 **responsibilities of the organization.**

1 Q. Okay. That was from 1988 through 1997; is  
2 that correct?

3 **A. Yes.**

4 Q. Okay. And how many different positions  
5 did you hold at that company?

6 **A. Two.**

7 Q. Two, okay. All right. What was your next  
8 job?

9 **A. I was the chief financial officer for**  
10 **Hughes Markets.**

11 Q. Okay. And what -- during what time period  
12 were you in that position?

13 **A. I was in that position from the same year,**  
14 **I guess -- trying to make sure I get these dates**  
15 **correct. I believe that was '97 through '98.**

16 Q. '97 through '98?

17 **A. Right. We sold the company.**

18 Q. Okay. Then what were your  
19 responsibilities in that job?

20 **A. It was overseeing the core accounting, the**  
21 **finances of the organization.**

22 Q. Okay. Then what was your next job?

23 **A. I was the chief financial officer for the**  
24 **Arden Group in Southern California. At the time**  
25 **they were a public company, for five years.**

1 Q. And during what timeframe were you in that  
2 job?

3 **A. That was '99 through 2004 or might have**  
4 **been '03.**

5 Q. Okay. And what were your responsibilities  
6 in that job?

7 **A. Those responsibilities were the typical**  
8 **responsibilities of a chief financial officer**  
9 **overseeing the treasury public reporting and**  
10 **accounting of the organization.**

11 Q. What was your next job after that?

12 **A. I was the vice president controller at the**  
13 **Super Value, Super Value, Inc., Minneapolis,**  
14 **actually Eden Prairie, Minnesota, but I was there**  
15 **for eight years.**

16 Q. Eight years, okay. So that would have  
17 been 2003 through -- math, 2011?

18 **A. 2012, so -- bear with me just a moment. I**  
19 **guess I left there in -- I think I started there in**  
20 **2004. I have to go back and look at my records. I**  
21 **was at the Arden Group, I started in '99 and was**  
22 **there five years essentially.**

23 Q. Okay.

24 **A. But I left there in 2012.**

25 Q. And what were your responsibilities in

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1 that position?

2 **A. Various. We had multiple acquisitions**  
3 **during the time I was there. I worked with respect**  
4 **to the acquisitions. I oversaw that. For a point**  
5 **in time my first few years there I worked as the VP**  
6 **controller, then I became the chief financial**  
7 **officer of the supply chain operations.**

8 **I also managed a transition service**  
9 **agreement for six years of that timeframe that was**  
10 **Cerberus.**

11 THE COURT REPORTER: I'm sorry?

12 **A. Cerberus, but I managed that for a period**  
13 **roughly of six years. They had acquired -- the**  
14 **acquisition I referenced we made was around**  
15 **\$11 billion, but we did not buy all of the assets of**  
16 **the company. We acquired -- the other assets were**  
17 **acquired by Cerberus and we provided a transition --**  
18 **services to them for a period of that six-year**  
19 **timeframe.**

20 Q. Okay. Then you left that job in 2012?

21 **A. 2012. During that time I was also for a**  
22 **point in time for two years, in addition to**  
23 **overseeing the TSA, the vice president of investor**  
24 **relations.**

25 Q. And after you left that job, what was your

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1 next job?

2 **A. My next job I became the vice president**  
3 **controller at Chico's FAS in 2012. I continue in a**  
4 **version of that role today. I'm the controller**  
5 **chief accounting officer. My position now is group**  
6 **vice president of finance, controller and chief**  
7 **accounting officer.**

8 Q. Okay. So in the first position you were  
9 hired for at Chico's, what were your  
10 responsibilities?

11 **A. The responsibilities included the core**  
12 **accounting as controller and in addition to that I**  
13 **had loss prevention and payroll.**

14 Q. And then at what point did you get  
15 promoted to your current position?

16 **A. That would have been, I believe, August of**  
17 **2015.**

18 Q. Then, okay. What are your  
19 responsibilities in your current position?

20 **A. I have non-merch procurement, which**  
21 **oversees anything that we acquire as a company,**  
22 **goods or services, that do not go through the point**  
23 **of sale. I have the core accounting, traditional**  
24 **accounting for the financials of the company itself,**  
25 **loss prevention.**

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1 Q. Okay. What specifically are your loss  
2 prevention responsibilities?

3 **A. I have a director of loss prevention, so**  
4 **we're focused on shrink at the store level. We're**  
5 **also focused on fraud of all types, be it within the**  
6 **store, employee fraud, third-party or any type of**  
7 **fraud in the organization, including online fraud,**  
8 **e-commerce.**

9 Q. And that -- what we walked through was  
10 your complete employment history from when you  
11 graduated from the University of Oklahoma through  
12 today; is that correct?

13 **A. Yes.**

14 Q. Okay. So am I correct in understanding  
15 that you've never been directly employed by White  
16 House Black Market itself?

17 **A. That is correct.**

18 Q. What percentage of your time in your  
19 current position do you spend dealing with issues  
20 relating specifically to White House Black Market as  
21 opposed to other aspects of Chico's business?

22 **A. Specifically to White House Black Market**  
23 **is limited to compiling the financial records of the**  
24 **company and reporting out on that entity.**

25 Q. Okay. Can you give me an estimate as to

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1 what percentage of your time you spend on that?

2 **A. My time personally is a -- probably**  
3 **less -- I'm more focused on the parent company, the**  
4 **financials of the parent company. Specifically as**  
5 **it relates to White House, I'd say 5 percent of my**  
6 **time or less.**

7 Q. 5 percent of less; is that correct?

8 **A. Yes.**

9 MR. DWYER: Okay. Thank you. All right.  
10 Start with the exhibits. Can -- am I correct  
11 in understanding the court reporter has the  
12 exhibits that I gave you? Can you hand out  
13 copies of Mr. Oliver's declaration, please.  
14 Mark that Exhibit 1 and --

15 MR. GOHEEN: Well, I think we don't mark  
16 it as Exhibit 1. I think we either need a  
17 prefix or we need to continue on in our  
18 numeration.

19 MR. DWYER: Right. I apologize. We have  
20 a numeration from Ms. Umstead's deposition.  
21 Thank you for reminding me. Not sure where we  
22 are.

23 MR. GOHEEN: And for Mr. Coors.

24 MR. DWYER: True, true.

25 MR. GOHEEN: I think what we did last -- I

3 (Pages 9 to 12)

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1 think we did last week, maybe Mike can correct  
2 me, I think we did -- I think we just did Coor  
3 1 and so forth is my recollection.

4 MR. HILICKI: That's correct. That's what  
5 we did. So why don't we just do Oliver 1, 2,  
6 3.

7 MR. DWYER: Sounds good, Oliver 1. Sorry  
8 about that.

9 MR. GOHEEN: No worries.  
10 (Thereupon, the document was marked as  
11 Exhibit 1.)

12 THE COURT REPORTER: Okay. All set.  
13 BY MR. DWYER:

14 Q. Excellent. Mr. Oliver, this is your  
15 declaration. I'm sure you're familiar with it. If  
16 you want to take a chance to read it over, you're  
17 welcome to, or we can go into questions.

18 A. Questions are fine.

19 Q. Okay. So turning to the first paragraph  
20 of your declaration, what does it mean to be  
21 responsible for oversight and management of the  
22 financial functions at White House Black Market?

23 A. The financial records of White House Black  
24 Market are one of multiple entities that we have  
25 under the umbrella of Chico's FAS, Inc. Those

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1 records are all -- the accounting for those records  
2 are all captured in our ERP or SAP, our general  
3 ledger system, so we have accounting systems.

4 That information is fed from many  
5 different sources. We have subsidiary systems,  
6 payable systems, our cash and sales team that  
7 captures information regarding sales itself,  
8 inventory, management, different platform,  
9 Manhattan, and I have a group of roughly 60 to 65  
10 people that work beneath me that basically are  
11 compiling and recording the records of the entity of  
12 White House specifically itself.

13 So the accounting entries as relates to  
14 White House Black Market, they're making those  
15 entries. I will review and approve those entries,  
16 thinking here in terms of your earlier question when  
17 you asked how much time I spent specifically at  
18 White House, I'm thinking context of what I actually  
19 in the building of White House itself, they're in a  
20 separate building versus us, but if you look at the  
21 core of what I'm doing on a day-to-day basis, I'm  
22 sure that it probably goes beyond 5 percent in  
23 retrospect.

24 Because I do approve all of the journal  
25 entries that are recorded to capture the financial

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1 results of that entity. We also -- our team, my  
2 team reports out on the financials of White House  
3 Black Market as other entities within our  
4 organization specifically related to White House  
5 Black Market and, you know, my task at hand is to  
6 ensure that those financials collectively are in  
7 accordance with generally accepted accounting  
8 principles.

9 Q. So you said you think when you factor in  
10 time spent in the Chico's building dealing with  
11 White House Black Market, it's more than 5 percent.

12 Do you -- can you give an estimate to what  
13 the number is?

14 A. I would be speculating on that. I look at  
15 many different things on a consolidated basis. We  
16 have a process in place that ensure that -- our  
17 controls ensure that records as they relate to White  
18 House are captured within our system.

19 So I do rely upon the process that is  
20 tested. Our key controls are tested in accordance  
21 with Sarbanes-Oxley. We have both external and  
22 internal audit review, to the extent we do report  
23 out separately publicly on White House Black Market,  
24 that has been audited. So -- but in terms of the  
25 time to sit here and speculate, I'm not going to

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1 speculate. I'd have to go back and capture that, a  
2 record of that over a period of time.

3 Q. Okay. But the -- in excess of 5 percent  
4 estimate, the -- your statement it's in excess of  
5 5 percent includes time spent on consolidated data  
6 that includes White House Black Market; am I  
7 understanding correct?

8 A. No. I was saying specifically White House  
9 Black Market.

10 Q. Okay. Do you supervise any White House  
11 Black Market employees directly?

12 A. No.

13 Q. Do you supervise people at Chico's that  
14 supervise people at White House Black Market  
15 directly?

16 A. No.

17 Q. In general how much involvement does  
18 Chico's have in White House Black Market operations?

19 A. Your question again.

20 Q. In general how much involvement does  
21 Chico's have in White House Black Market operations?

22 MR. GOHEEN: Object to the form. Vague.

23 If you know you can answer.

24 A. The -- first I'm going to talk about my  
25 area of -- group. We operate a shared service

4 (Pages 13 to 16)

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1 model. The brands themselves are not performing the  
2 accounting for their individual -- individual brand.  
3 That's done by the shared service team, my team.

4 So there's not people in the brand that  
5 are making accounting entries to capture the  
6 results. They're users of the product we generate.  
7 And so the accounting process has largely been  
8 systematized and we're able to, you know, capture  
9 that. But when you indicated Chico's, I am going to  
10 assume you meant Chico's FAS, the parent company,  
11 not Chico's the brand. Chico's the brand has very  
12 little involvement with White House.

13 Chico's FAS, Inc., the parent company, who  
14 our executive officers are part of, would be --  
15 provide the strategic leadership for that brand  
16 itself, albeit the brand has its own brand president  
17 who leads the brand.

18 BY MR. DWYER:

19 Q. Okay. Yeah, just -- we should just for  
20 the sake of simplicity stipulate for when I say  
21 Chico's, I mean Chico's FAS and not Chico's the  
22 brand. If for some reason I want to ask you about  
23 Chico's the brand, I'll specify that's what I'm  
24 talking about. Is that okay?

25 A. That works.

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1 Q. Okay. Do you know whether Chico's was  
2 involved in decision to use the Fujitsu payment  
3 processing system that is the subject of this  
4 litigation?

5 A. Yes.

6 Q. You know whether they were?

7 A. Yes.

8 Q. Were they?

9 A. Yes.

10 Q. Were you involved in that decision?

11 A. I did participate in various meetings with  
12 Fujitsu and other vendors as they made their initial  
13 presentation.

14 Q. Did you -- were you involved in the  
15 decision to go with Fujitsu?

16 A. I did not have a vote in that  
17 decision-making process but I did participate and  
18 listen to the presentations and provided some input.

19 Q. Was Chico's involved in negotiations with  
20 Fujitsu?

21 A. Was Chico's involved, yes.

22 Q. -- the decision that led to the ultimate  
23 agreement with Fujitsu.

24 A. I was not involved at that time. My  
25 involvement with non-merch procurement began last

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1 summer when we formed that department. Previously  
2 that was conducted by our IT group that really led  
3 that effort. I can tell you that we did bring in  
4 multiple vendors, including the incumbent, and it  
5 was more of a competitive process, so we did get  
6 bids from everyone. We looked at the products  
7 themselves and ultimately selected a vendor.

8 Q. Let's -- can we move onto the second  
9 paragraph of your declaration. In this paragraph  
10 you say you reviewed documents and records kept by  
11 White House Black Market in the ordinary course of  
12 its business.

13 Have I got that correctly?

14 A. Yes.

15 Q. What documents did you review in  
16 connection with preparing this declaration?

17 A. I looked at one, I look at our public  
18 filings we do with the SEC. I also -- I've looked  
19 at more specifically I think that would be the  
20 primary document that I used in preparing this  
21 declaration. When you go back to the  
22 exhibit itself, the sales numbers, you can tie it  
23 back to the -- our SEC filings, which was a product  
24 of our accounting close process that we do in the  
25 ordinary course.

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1 Q. Sorry. You said the what filings, the SEC  
2 filings?

3 A. Right, the Securities and Exchange  
4 Commission.

5 Q. Okay.

6 A. As a public company, we file --

7 Q. Sounded like you said RRSAP filings,  
8 something I'm not familiar with. That's on me. I  
9 apologize.

10 So the only documents you looked at were  
11 the public filings by Chico's FAS?

12 A. For this -- when you look at this  
13 declaration, there's two parts to this declaration,  
14 one, you have information in here that specifically  
15 relates to the valuation of Chico's -- excuse me, to  
16 White House Black Market and focusing just on that  
17 item itself, what I looked at were the sales of  
18 Chico's in total and the sales of White House, as  
19 well as the market cap at a specific date for  
20 Chico's FAS. From that I extrapolated or derived a  
21 valuation for White House Black Market.

22 Now, there's other commentary in here,  
23 when I refer to things such as other -- the state of  
24 retail today, the headwinds the industry is facing  
25 in the ordinary course I'm monitoring, almost daily

5 (Pages 17 to 20)



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1 **I'm getting communications, you know, talking about**  
 2 **how other retailers are doing, what's happening in**  
 3 **the space that we operate, and it's an understanding**  
 4 **I have and there's nothing I stated here that you**  
 5 **would not be able to go back with respect to the**  
 6 **state of the retail industry and find in the public**  
 7 **domain.**

8 Q. So am I correct in understanding that what  
 9 you're saying there is you looked at the public  
 10 filings and then the portion of something to do with  
 11 the industry, the whole, relate which materials you  
 12 saw in the public domain, these are websites on the  
 13 internet?

14 **A. More than the public domain, the Wall**  
 15 **Street Journal, the Women's Wear Daily, which is a**  
 16 **publication, and other email updates I get from our**  
 17 **investor relations team.**

18 Q. Okay. And did you keep track of what  
 19 materials you looked at in support of those  
 20 perusing?

21 **A. With respect to what I have here, first**  
 22 **off I went back and I referenced those to make these**  
 23 **comments.**

24 Q. Okay. When you were going back and  
 25 looking at them as you were preparing the

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1 declaration, did you keep track in any way what  
 2 documents you were looking at?

3 **A. I did not, but I could replicate what I**  
 4 **have here. You could replicate what I have here in**  
 5 **the public domain.**

6 Q. Okay. And so the -- am I correct in  
 7 understanding then that the only documents you  
 8 looked at to prepare this declaration are the public  
 9 filings of Chico's FAS and the publicly available  
 10 documents you just described?

11 MR. GOHEEN: Object to the form. That's  
 12 not what he said.

13 **A. My -- in preparing this is -- also**  
 14 **includes the knowledge I've obtained over the last**  
 15 **five years working at Chico's FAS and specifically**  
 16 **working with the financial records of White House**  
 17 **Black Market as well.**

18 **It also includes the referencing the**  
 19 **market close capitalization Chico's FAS as of the**  
 20 **June date cited in the declaration, the closing**  
 21 **stock price and the shares that were outstanding as**  
 22 **of that date at that point. I think that responds**  
 23 **to your question.**

24 BY MR. DWYER:

25 Q. Okay. Other than the subject we have

Page 23

1 mentioned so far, were there any other documents  
 2 that you looked at in preparing this deposition?

3 **A. Let's pause for a moment and let me go**  
 4 **back and review the declaration in its entirety and**  
 5 **I'll get back with you momentarily.**

6 Q. Okay. That sounds good.

7 **A. Okay. If we can start on page 2 of the**  
 8 **declaration, actually Item 2, the second sentence:**  
 9 **I have personal knowledge of the facts stated herein**  
 10 **based on my work experience and review of documents**  
 11 **and records kept by White House Black Market in the**  
 12 **ordinary course.**

13 **The documents I reviewed in the ordinary**  
 14 **course, setting aside journal entries that I approve**  
 15 **on a period basis, each month, to close the**  
 16 **accounting records, we generate period financial**  
 17 **statements that roll up into the quarterly financial**  
 18 **statements which ultimately go into our SEC filings**  
 19 **for the 10-Q or 10-K, but those documents, the end**  
 20 **product that summarizes the actual results for the**  
 21 **quarters presented here were the documents**  
 22 **referenced specifically for this declaration itself.**

23 **With respect to Item 6 --**

24 MR. GOHEEN: Let him ask questions. All  
 25 right. This isn't a speech.

Page 24

1 **A. Okay.**

2 BY MR. DWYER:

3 Q. Thank you. So am I understanding that  
 4 what you're saying is that, in addition to looking  
 5 at the public filings, you also looked at the  
 6 underlying accounting documents that lead to  
 7 creation of the public filings?

8 **A. No. I looked at the summary product that**  
 9 **we had signed off on and had audited by the external**  
 10 **auditors that I prepared in the ordinary course of**  
 11 **my job responsibilities. I did not go back and**  
 12 **re-review, you know, each journal entry we made in**  
 13 **the ordinary course. I looked at the end game**  
 14 **product, which was the SEC filings, which I believe**  
 15 **to have integrity as do our external auditors.**

16 Q. Okay. Okay. You can move onto the next  
 17 thing you were going to say.

18 **A. Item 6 --**

19 MR. GOHEEN: Well, is there a pending  
 20 question?

21 MR. DWYER: No, I don't think so.

22 MR. GOHEEN: Then we're not going to  
 23 answer anything.

24 BY MR. DWYER:

25 Q. Other than the -- other than materials you

6 (Pages 21 to 24)

Page 25

1 stated, are there any other documents you relied on  
2 in preparation of the declaration?

3 **A. Other than the items of the review in the**  
4 **public domain I mentioned earlier and the closing**  
5 **stock price in the public domain of Chico's FAS as**  
6 **well as the shares outstanding, I believe that to be**  
7 **complete. However, I still have still the other**  
8 **items I was going to call out, starting with Item 6.**

9 Q. Okay. We'll get to Item 6 in a bit, but  
10 why don't we -- okay. Just so I'm clear, other than  
11 the documents you've highlighted so far, there were  
12 no additional documents that you reviewed in  
13 preparing this declaration; is that correct?

14 **A. My original intent was to walk through the**  
15 **declaration and discuss each one. What the**  
16 **documents were, I want to make sure there's clarity,**  
17 **what I looked at in order to make the statements.**  
18 **At this point in time we've talked about Item 2.**  
19 **The next item I have colored that I'd like to talk**  
20 **about is Item 6.**

21 Q. Can you describe to me the documents you  
22 relied upon in preparing Item 6?

23 **A. I looked specifically at information in**  
24 **our previous SEC filings.**

25 Q. Okay. Which previous SEC filings?

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1 **A. This particular one was likely a**  
2 **combination of the Q-1 SEC filing as well as our**  
3 **10-K filing.**

4 Q. Okay. The Q-1 for the first quarter of  
5 this year?

6 **A. 2017, yes, that would have been filed in**  
7 **May '17.**

8 Q. All right. And the 10-K for last year?

9 **A. Right. Some of the same information would**  
10 **have been in the -- I might have also pulled that**  
11 **from our press release. We indicate -- there's an**  
12 **exhibit that indicates the number of boutiques and**  
13 **outlets. If you look at our press release for Q-1**  
14 **for '17 filed May '17, you'd find the 434, 72. The**  
15 **6800 employees likely goes back to the 10-K filing.**

16 Q. Okay. What is the next paragraph in this  
17 declaration as to which you relied on documents that  
18 you have not previously disclosed?

19 **A. When you go to Item 10, just -- Item 10, I**  
20 **just wanted to call out that in the public domain,**  
21 **the closing stock price, I would have referenced**  
22 **that. You could find that on many different sites,**  
23 **MSN, Yahoo, et cetera, but I did get -- I do track**  
24 **our closing stock price on a daily basis. That is**  
25 **there.**

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1 **Our 52-week high would have also been**  
2 **available as of June 13th, \$16.85, I would have**  
3 **looked at information the public domain here.**

4 Q. Okay. What is the next paragraph of this  
5 declaration on which you relied on the documents you  
6 haven't previously mentioned?

7 **A. The -- specifically as relates to 12, my**  
8 **comments made on 12 were in the first sentence --**  
9 **were based upon working with our counsel, the**  
10 **Chico's FAS counsel, and that was the understanding**  
11 **that I gained during -- in preparation for this**  
12 **declaration to have this framed.**

13 Q. So is there specific documents from which  
14 you obtained that understanding?

15 **A. That was obtained through conversations**  
16 **with our counsel.**

17 Q. Those conversations were oral or written?

18 **A. Oral.**

19 Q. Okay. All right. Are there any other  
20 paragraphs in this declaration based on documents  
21 you have not yet disclosed?

22 **A. The Item 13 was also based on a working**  
23 **conversation or working meeting with our counsel, as**  
24 **was 14 and 15, albeit some of this knowledge I had**  
25 **line of sight of just talking internally with our IT**

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1 **folks in the ordinary course.**

2 Q. Let's go back to the conversations with  
3 counsel with regard to 13 through 15.

4 Were those conversations oral or in  
5 writing?

6 **A. Oral.**

7 Q. Did they -- in those oral conversations,  
8 did counsel identify documents for you to review to  
9 further your knowledge there?

10 MR. GOHEEN: Don't answer that. That's  
11 privileged. Don't answer that. I instruct you  
12 not to answer.

13 BY MR. DWYER:

14 Q. All right. You mentioned previously that  
15 you had discussed that internally with IT people; is  
16 that correct?

17 **A. In the ordinary course I cannot tell**  
18 **you -- I obtained -- I can't tell you specifically**  
19 **when I learned that. In the ordinary course,**  
20 **there's certain information I might learn in my**  
21 **day-to-day job responsibilities but this -- these**  
22 **comments are consistent with my knowledge based on**  
23 **working at Chico's FAS.**

24 Q. That's knowledge you had prior to the time  
25 you began to prepare this declaration?

7 (Pages 25 to 28)



Page 29

1 **A. Yes. And it was also subsequently**  
2 **affirmed with conversations.**

3 Q. Conversations with who?

4 **A. People in IT.**

5 Q. Do you remember who in IT?

6 **A. The only other -- the only person I can**  
7 **recall having conversations with specifically was**  
8 **Nancy Holland.**

9 Q. Can you spell that name?

10 **A. Nancy?**

11 MR. GOHEEN: Holland.

12 BY MR. DWYER:

13 Q. Pulman?

14 MR. GOHEEN: Holland.

15 **A. Holland, the country.**

16 BY MR. DWYER:

17 Q. Holland. Okay. Thank you. All right.

18 So you had conversations with Nancy  
19 Holland on this subject after the time you began to  
20 prepare this declaration?

21 **A. Yes.**

22 Q. Do you remember specifically when those  
23 conversations were?

24 **A. The last time I had any conversation with**  
25 **her was yesterday and --**

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1 Q. And do you remember the time of any prior  
2 conversations with her after the time you began to  
3 prepare this declaration?

4 **A. Nancy was in all the prep meetings --**  
5 **excuse me, and the selection meetings for Fujitsu as**  
6 **well as the other vendors we had and I might see her**  
7 **in the ordinary course of business. So I cannot**  
8 **give you a specific date, but I've known Nancy**  
9 **Holland for essentially the entire time I've been at**  
10 **Chico's FAS.**

11 Q. And what did Nancy say to you with regard  
12 to the subjects of paragraphs 13 through 15?

13 MR. GOHEEN: Only to the extent not in the  
14 presence of counsel.

15 **A. I have no comment.**

16 BY MR. DWYER:

17 Q. Sorry?

18 **A. It was in the -- my conversation was in**  
19 **the presence of counsel and I've been directed not**  
20 **to comment.**

21 Q. All your conversations with Nancy Holland  
22 that were relating to paragraphs 13 through 15 were  
23 in the presence of counsel?

24 **A. No. That's not what -- I stated I've had**  
25 **multiple conversations with Nancy Holland over the**

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1 **last five years. I've been in various meetings with**  
2 **her over the last five years, including the rollout**  
3 **of Fujitsu.**

4 **Specifically the last conversation that I**  
5 **had with Nancy Holland was in the presence of**  
6 **counsel. The state -- the very last conversation.**  
7 **The comments that were made here in 13, 14 and 15**  
8 **are consistent with my knowledge that I've obtained**  
9 **in the ordinary course of my responsibilities in**  
10 **participating in the rollout of Fujitsu and my**  
11 **knowledge of the point of sale. My meetings in the**  
12 **presence of counsel only affirmed these statements**  
13 **were factual.**

14 Q. Am I correct in understanding that all the  
15 conversations you have had with Nancy Holland  
16 subsequent to the time you began to prepare this  
17 declaration were in presence of counsel?

18 MR. GOHEEN: Asked and answered. Let's  
19 move on.

20 **A. Yes. I've had one conversation with Nancy**  
21 **and it was in the presence of counsel.**

22 BY MR. DWYER:

23 Q. That's -- all right. All right. Let's go  
24 back to paragraph 2, still on paragraph 2, how did  
25 this declaration come about?

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1 **A. I was contacted --**

2 MR. GOHEEN: Only to the extent it does  
3 not reveal attorney-client communications,  
4 otherwise you can answer, as long as it doesn't  
5 reveal attorney-client communications.

6 **A. Okay. I received a phone call from**  
7 **counsel and I met with counsel.**

8 BY MR. DWYER:

9 Q. You received a phone call from counsel?

10 **A. Yes.**

11 Q. And what about receiving a phone call from  
12 counsel prompted you to draft this declaration?

13 **A. I was asked to draft this declaration.**

14 Q. How did you determine what subjects to  
15 discuss in the declaration?

16 MR. GOHEEN: Same instruction, only to the  
17 extent it does not reveal attorney-client  
18 communications.

19 **A. Counsel did not --**

20 MR. GOHEEN: Only to the extent it does  
21 not reveal attorney-client communications.

22 **A. They did not direct me specifically on**  
23 **anything other -- there was only one comment that I**  
24 **was asked to make, which I think is okay.**

25 MR. GOHEEN: No. Only -- if it's a

8 (Pages 29 to 32)

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1 product of attorney-client communications do  
2 not reveal it.

3 **A. Okay. The -- I'd say the majority of the**  
4 **items in here were items that I added on my own**  
5 **without any direction from counsel.**

6 BY MR. DWYER:

7 Q. Counsel contacted you and asked you to  
8 prepare a declaration and you decided what to put in  
9 the declaration?

10 **A. A lot -- most of this is free form. That**  
11 **is my own thinking without input from counsel. I'd**  
12 **say better than 90 percent of it.**

13 Q. Who typed this declaration?

14 **A. I prepared the initial draft. I wrote it**  
15 **and I shared it with counsel.**

16 Q. Counsel provided comment.

17 MR. GOHEEN: No. Objection. Don't answer  
18 that. Next question. Next question.

19 MR. DWYER: Basis for the objection is  
20 attorney-client privilege?

21 MR. GOHEEN: Yes.

22 BY MR. DWYER:

23 Q. Okay. Did -- other than yourself and  
24 counsel, did anyone have any input in the subject  
25 that was discussed in this declaration?

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1 **A. No.**

2 Q. Move onto paragraph 3, was this something  
3 you put in the declaration of your own volition?

4 **A. I believe I already answered that.**

5 MR. GOHEEN: Yeah. That's asked and  
6 answered.

7 MR. DWYER: No, he said -- we don't need  
8 to get in too much argument. He said the vast  
9 majority. I would like to, with regard to the  
10 specific statements in the declaration, probe  
11 the witness whether they're made by him  
12 initially or by unidentified third party.

13 MR. GOHEEN: And the relevance of that is  
14 what exactly to this case?

15 MR. DWYER: Relevance goes to relevance of  
16 it goes to -- again, I don't want to  
17 particularly want to get into objection  
18 argument here. If you want to object you can  
19 object, but I think it goes to the, you know,  
20 basis for his knowledge of these statements in  
21 this declaration.

22 MR. GOHEEN: So you actually want to ask  
23 him whether he knows whether White House Black  
24 Market is a women's apparel retailer, that's  
25 actually the question?

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1 MR. DWYER: No, I want to ask whether this  
2 was something he decided to put in the  
3 declaration or maybe it was suggested by  
4 someone else.

5 MR. GOHEEN: Why don't you ask him about  
6 the facts of the declaration as opposed to who  
7 did what then we'll be a lot better off.

8 MR. DWYER: If you would like to take this  
9 deposition, you're welcome to.

10 MR. GOHEEN: Well, I'm the one that's here  
11 and you're not. So that's how it's going to  
12 go. He may or may not -- he may or may not  
13 remember exactly what he put into the  
14 declaration. It's been a few months. So just  
15 ask him about the facts of the declaration  
16 versus the preparation and this will move a lot  
17 more quickly.

18 MR. DWYER: Are you directing him not to  
19 answer my question or no?

20 MR. GOHEEN: I'm not. It's not a good  
21 question. That's why I objected to it. I  
22 think it's irrelevant and I'm not going to go  
23 very much further with it.

24 MR. DWYER: If you want to move to scoot  
25 this to some subsequent motion on the basis

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1 you're free to, but are you directing him not  
2 to answer my question?

3 MR. GOHEEN: You seem to be asking  
4 questions multiple times. No, I've already  
5 answered your question. Let's move on.

6 BY MR. DWYER:

7 Q. Mr. Oliver, can you please answer my  
8 question?

9 MR. GOHEEN: If you know.

10 **A. I'd have to go back to my original draft I**  
11 **provided counsel and look at the final product on**  
12 **this specific question.**

13 BY MR. DWYER:

14 Q. What does it mean to be a women's apparel  
15 retailer?

16 **A. Women's apparel retailer is a -- in our**  
17 **case is a specialty retailer that specializes in**  
18 **women's clothing that we sell to the public.**

19 Q. Does White House Black Market sell  
20 anything other than women's clothes?

21 **A. Yes. We do have other accessories we sell**  
22 **in the ordinary course. We have sold shoes as well,**  
23 **but I think all that collectively can be referred to**  
24 **as apparel or accessories.**

25 Q. Fair enough. What kind of apparel does

9 (Pages 33 to 36)

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1 White House Black Market sell?

2 **A. We do not sell undergarments. The product**  
3 **you visually see any woman wearing, the external**  
4 **garments she might be wearing or the accessories,**  
5 **the bling or the necklace, you might see that as**  
6 **well, or perhaps the sandals or shoes, flats.**

7 **We do focus on women that are in the**  
8 **workplace. We're targeting women largely around 35**  
9 **and older, so there's kind of a demographic we're**  
10 **going after but, you know, I'd say they're likely in**  
11 **your law firm women wearing White House Black Market**  
12 **apparel on occasion.**

13 Q. Am I correct in understanding White House  
14 Black Market doesn't sell uniforms?

15 **A. We do not sell uniforms.**

16 Q. Okay. So everything that White House  
17 Black Market sells can be perfectly worn outside the  
18 workplace as well?

19 **A. Yes.**

20 Q. Thank you. Move onto paragraph 4 of your  
21 declaration. Is Chico's sole owner of White House  
22 Black Market?

23 **A. I'd go back to the legal structure, but it**  
24 **is under the Chico's FAS, Inc. umbrella, but to your**  
25 **point, yes, there are no other external owners.**

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1 **Everything ultimately is 100 percent a subsidiary of**  
2 **Chico's FAS, either directly or indirectly.**

3 Q. Okay. Thank you. Do Chico's and White  
4 House Black Market share any officers?

5 MR. GOHEEN: Object to the form. You can  
6 answer if you know.

7 **A. The only officer I believe that would be**  
8 **shared, I'd have to go back to counsel, but I**  
9 **believe that the president of White House Black**  
10 **Market isn't an officer of Chico's FAS. She is the**  
11 **president of White House Black Market.**

12 **She's a named executive officer of Chico's**  
13 **FAS if you look at our public filings and she's also**  
14 **an officer of White House Black Market. If you look**  
15 **at the legal entity, went back to see who the**  
16 **officers were. I have to go look to see**  
17 **specifically who are the officers of White House**  
18 **Black Market.**

19 BY MR. DWYER:

20 Q. You don't recall any others but there may  
21 be?

22 **A. Well, it's a legal entity. There's going**  
23 **to be more than one.**

24 Q. What I mean is you don't recall any other  
25 individuals who are officers of both entities but

Page 39

1 there may be such individuals?

2 **A. There could be but I'm not aware of any.**  
3 **I've seen that list, but I don't believe that is the**  
4 **case, but I would have to go back and affirm that by**  
5 **looking at the actual officer list and see if there**  
6 **is an intersection.**

7 Q. Are there any directors -- are there any  
8 individual who are directors of the Chico's FAS and  
9 White House Black Market?

10 **A. When you say directors, I assume you're**  
11 **meaning on the board of directors or just at the --**

12 Q. That is correct, yes.

13 **A. Okay. No.**

14 Q. Move onto paragraph 5 of your declaration.  
15 When specifically did White House Black Market open  
16 its first Toronto store?

17 **A. My recollection is the spring of 2013.**  
18 **I'd have to go back and affirm that.**

19 Q. Do you know what system or software White  
20 House Black Market used for printing point-of-sale  
21 receipts in its Canadian stores between 2013 and  
22 2015?

23 **A. I do not.**

24 Q. Do you know whether that software or  
25 system printed receipts compliant with U.S.

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1 requirements?

2 **A. I was not looking at that. It's my**  
3 **understanding that what we printed in Canada was**  
4 **appropriate for Canada, but would not have been**  
5 **appropriate for the United States.**

6 Q. Do you know what system or software White  
7 House Black Market used for printing point-of-sale  
8 receipts in U.S. stores between 2013 and 2015?

9 **A. Well, for point of sale we use Fujitsu.**  
10 **The printers, I'm sure I heard the name. I'd have**  
11 **to go back and research that.**

12 Q. Between 2013 and 2015 you used Fujitsu in  
13 the United States?

14 **A. Between 2013 and 2015, excuse me, we were**  
15 **using Epicor at that point, but with respect to the**  
16 **actual device that was printing the receipts, if**  
17 **it's coming out of Epicor system or separate**  
18 **printer, I'd have to go back and look at that.**

19 Q. What is the basis for your knowledge of  
20 this subject?

21 **A. Well, working at FAS there's a certain**  
22 **amount of knowledge I have just being part of the**  
23 **company, having participated in the vendors that**  
24 **came in and presented would have given me knowledge**  
25 **as well. Having frequented and walked many stores,**

10 (Pages 37 to 40)

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1 **White House stores, just looking at to understand**  
 2 **what we're doing inside the four walls would have**  
 3 **provided knowledge but I was not specifically**  
 4 **looking on the credit card receipts.**

5 Q. Move onto paragraph 6 of your declaration.  
 6 How many of the 434 boutiques are located in the  
 7 United States?

8 **A. I would go back to our first quarter**  
 9 **filing and specifically it would identify how much**  
 10 **of those were U.S., how many of those were in**  
 11 **Canada, but to answer your question, approximately**  
 12 **424 of those are in the United States. I believe**  
 13 **ten might be in Canada. I would have to go back and**  
 14 **look, very small number.**

15 Q. And how many of the 72 outlets are located  
 16 in the United States?

17 **A. I believe all but possibly one.**

18 Q. When you say United States for both the  
 19 preceding two questions, does that include Puerto  
 20 Rico and the U.S. Virgin Islands?

21 **A. Yes, I would have, U.S. territories I**  
 22 **would have included when I said United States. I'm**  
 23 **thinking when I state international I was stating**  
 24 **Canada.**

25 Q. And how many boutiques are located in

Page 42

1 Canada?

2 **A. Ten or less.**

3 Q. Can we introduce the next exhibit, the  
 4 form, the 10-K?

5 (Thereupon, the document was marked as  
 6 Exhibit 2.)

7 MR. GOHEEN: This is Oliver 2.

8 MR. DWYER: This is Oliver 2, yes.

9 MR. GOHEEN: All right. Need a break or  
 10 anything?

11 **A. I'm good.**

12 BY MR. DWYER:

13 Q. Okay. Are you familiar with this  
 14 document?

15 **A. Yes.**

16 Q. Can you tell me what this is?

17 **A. It's a 10-K filing with the SEC.**

18 Q. Okay. Can you turn to page 8 of this  
 19 document?

20 **A. Are you referencing -- my document has two**  
 21 **page numbers. Which page are you referencing?**

22 Q. Sorry. Page -- that's a good question. I  
 23 was intending to reference page 8 or 89 on the  
 24 bottom right corner.

25 **A. Yes.**

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1 Q. Is there a chart of stores on this page?

2 **A. Stores by brand, yes.**

3 Q. Does this refresh your recollection as to  
 4 how many of the 434 boutiques are located in the  
 5 United States?

6 MR. GOHEEN: Object to the form. That's  
 7 improper. He didn't say anything that  
 8 conflicted with that.

9 MR. DWYER: Not saying he did. He said he  
 10 didn't know. Trying to jog his memory.

11 MR. GOHEEN: His declaration was as of  
 12 today, not as of the end of 2016. That's my  
 13 point. So there may be differences but it's  
 14 not -- it's apples and oranges.

15 **A. I believe what I stated of the 434**  
 16 **boutiques, ten or less were outside the United**  
 17 **States. This document would state that there were**  
 18 **423 front line boutiques as of the end of the year.**  
 19 **434 would have been a -- most likely as of Q-1. I**  
 20 **think earlier in the deposition I stated on Item 6**  
 21 **that part of this came from the first quarter filing**  
 22 **and part of it came from the 10-K.**

23 BY MR. DWYER:

24 Q. Okay. Well, then why don't we introduce  
 25 as Oliver 3 the first quarter filing?

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1 **A. I've got to pause for a moment.**

2 MR. GOHEEN: Not a question pending.

3 **A. Earlier I stated either came from the K --**  
 4 **excuse me, the Q or the press release. The press**  
 5 **release has an exhibit in the back that would tell**  
 6 **you the store counts for the first quarter.**

7 (Thereupon, the document was marked as  
 8 Exhibit 3.)

9 MR. DWYER: Okay. So are we -- is it  
 10 marked?

11 THE COURT REPORTER: Yes.

12 BY MR. DWYER:

13 Q. Okay. Mr. Oliver, you have before you  
 14 Oliver Exhibit 3. Can you tell me what this  
 15 document is?

16 **A. It's a 10-Q filing with the SEC.**

17 Q. Okay. Is this for the first quarter of  
 18 this year?

19 **A. Yes.**

20 Q. Okay. And does this document contain --  
 21 am I correct in understanding you jumped in --  
 22 before I marked this exhibit, is that the number,  
 23 the 434 boutiques number doesn't come from this  
 24 document. It comes from a press release issued  
 25 around the same time?

11 (Pages 41 to 44)



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**A. Yes. The exhibit would have been on the last, one of the last two pages of that filing.**

Q. Okay. All right. For the moment you can put that aside. Let's go back to Oliver 2.

**A. Okay.**

Q. So am I -- so if you go to page 8 of 89 of Oliver 2, the 10-K -- am I correct the 10-K says at the end of the year, fiscal year 2016 there were 432 -- excuse me, 423 boutiques, White House Black Market boutiques; is that correct?

**A. Yes.**

Q. According to your declaration as of the first quarter of this year there are 434 White House Black Market boutiques; is that correct?

MR. GOHEEN: Object to form. You can answer.

**A. In the context of how this is presented, Item 6, the 434 included United States, Canada, Puerto Rico, so when you look at page 8, it would have been the 423 plus six, so total 429. So there's a difference of five between the 434 and what we have here at that point in time.**

BY MR. DWYER:

Q. Okay. So the number increased by five between the 10-K and your declaration; is that

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store traffic, and that digital customer service customers, you know, the likes of Amazon and other upstart digital retailers is also having impact on the brick and mortar retail itself.

Q. All right. Did you review any internal White House Black Market documents in preparing this paragraph?

**A. Other than knowing the -- no. I would have looked at the comp sales for -- and traffic for White House Black Market. That would have been the extent of it.**

Q. And that is memorialized in the document somewhere?

**A. That is -- we talk about our comp sales in our press release. You'll see that there specifically for White House, yes.**

Q. Comp sales, is that -- you said comp sales?

**A. Yes.**

Q. Is that correct?

**A. Right.**

Q. And you said that you looked -- did you also look at documents reflecting traffic?

**A. I looked at internal documents regarding traffic. We make statements with respect to traffic**

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correct?

**A. Yes.**

Q. Okay. Thank you. All right. Let's move onto paragraph 7 of your declaration.

MR. GOHEEN: Let's take five. It's been about an hour.

MR. DWYER: Want to take a break?

THE VIDEOGRAPHER: All right. We are now going off the record at 10:29 a.m.

(Off the record.)

THE VIDEOGRAPHER: We are now back on the record in the deposition of David Oliver at 10:38 p.m.

MR. GOHEEN: A.m.

THE VIDEOGRAPHER: 10:38 a.m.

BY MR. DWYER:

Q. Mr. Oliver, thank you. I believe we are on paragraph 7 of your declaration. What is your basis for the statements in this paragraph?

**A. As stated earlier, I do read publications governing the industry. I do monitor traffic. I do monitor our store sales. And collectively if you read what is happening today in specialty retail or retail in general, my comments were consistent with the fact we are experiencing declining mall traffic,**

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**typically as to what is occurring.**

Q. How does White House Black Market measure store traffic?

**A. We measure it by the -- we have counters at our stores that when people walk in, we know what the traffic is. When they -- there's software that tracks that.**

Q. And has White House Black Market experienced decline in store traffic?

**A. Your question again.**

Q. Has White House Black Market experienced decline in store traffic?

**A. Yes.**

Q. Over what timeframe?

**A. This is a generalized statement, but over the last few years, we've been declining retail, all our brands, as well as other specialty retail have been experiencing declining traffic.**

Q. Have you personally measured traffic for White House Black Market?

**A. No.**

Q. Have you -- have you reviewed -- am I correct in understanding you have reviewed documents reflecting measurements of store traffic?

**A. Yes.**

12 (Pages 45 to 48)



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Q. How often is store traffic measured?

**A. Continuous.**

Q. How often are reports of store traffic generated?

**A. We get daily reporting internally but the reports I focus on are a period basis.**

Q. Period basis. What is the period for that period basis?

**A. For us we follow a retail calendar, which is 52 weeks. We are 5/4/4 -- excuse me, 4/5/4, four weeks, five weeks, four weeks makes the quarter.**

Q. So at the end of a four or five-week cycle; is that correct?

**A. Well, in the public domain would be at the end of a 13-week cycle.**

Q. Right, but internally it's the end of four or five or four-week cycle?

**A. That would be the lowest level I'm focused on myself.**

Q. Okay. What was the -- which measure of store traffic did you review in preparing this declaration?

**A. The -- I'm sure it would have been the quarter from our -- I'm sure would have been the quarter.**

**but I've seen all of those in the ordinary course at the time we prepared our SEC filings.**

Q. Just to be very clear, you did not specifically go back and review the documents for the declaration?

MR. GOHEEN: Object to the form. Asked and answered. Come on. That's about the fourth time you've asked it. Let's go.

MR. DWYER: I keep getting different answers.

MR. GOHEEN: No, you haven't. You haven't got the answer you wanted. That's different.

BY MR. DWYER:

Q. Can you answer my question, please?

MR. GOHEEN: Same objection. Last time we're going to do it, too. No or yes.

**A. Restate your question you'd like answered again.**

BY MR. DWYER:

Q. I'll go back because I'm very -- this will be the fifth time Barry's going to object. Am I correct in my understanding that you did not go back and review quarterly traffic numbers in preparing your declaration?

MR. GOHEEN: Same objection.

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Q. Quarter, so the first quarter numbers for this year?

**A. They probably would have gone beyond that. You know, part of the statement I've made here is in having prepared the documents for the last five years on a quarterly basis we have been talking about declining store traffic continually. That is the state of the union --**

Q. Okay. So just to be clear, am I correct in understanding you did review quarterly store traffic documents as you prepared this declaration?

**A. On store traffic I cannot speak to that specifically. On -- in preparing this declaration as relates to comp sales, that I can attest to that I did look at that.**

Q. You can attest to the -- my question with respect to store traffic is you don't recall?

**A. I don't -- did I -- no, my statement is I did not go back and refresh my memory with respect to store traffic and look at store traffic for each of the prior quarters. I have knowledge from my job responsibilities and our public filings we have declining store traffic.**

**I've looked at those in the ordinary course each quarter in drafting our Qs and our Ks,**

**A. I answered that. Yes.**

BY MR. DWYER:

Q. What is White House Black Market doing to combat declining store traffic?

MR. GOHEEN: If you know.

**A. I am not the party that is driving that. You would need to engage others to answer that question.**

BY MR. DWYER:

Q. Are you involved in those discussions at all?

**A. No.**

Q. What do you mean by competition from digital commerce retailers?

**A. You have multiple new retail retailers that are selling product. The ease of entry in the digital commerce world into retail is easier than it's ever been. The costs have come down and you're looking at a proliferation of new upstarts that are basically taking market share from the historical legacy brick and mortar type retailers in general. The growth --**

Q. Who are those new upstarts?

**A. There are, you know, sitting here thinking -- some of the companies that you may --**

13 (Pages 49 to 52)

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specifically as it relates to White House or women's retailer I can think of Poetry would be one, Venus, there are many retailers -- many players that work, specifically attack just this space. We did have -- there are others out there. I would have to go back and compile a list.

Q. Did you compile a list as you were preparing this declaration?

A. No.

Q. How long has Venus been operating?

A. I can't speak to that.

Q. Did it -- is it within the last five years?

MR. GOHEEN: Object to form.

A. I can't -- I cannot speak to that. I don't --

BY MR. DWYER:

Q. The other one you said was Poetry; is that correct?

A. Poetry. P-O-E --

Q. Poetry, I'm sorry. How long has that been operating?

A. I cannot speak to that.

Q. What is -- how does White House Black Market track the phenomenon of competition from

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company you referenced?

A. P-O-E-R-T-Y (sic).

Q. What is the time period you were referring to in your discussion of competition from digital commerce retailers?

A. The onslaught has really occurred over the last six years as you've seen growth in digital commerce.

Q. So in -- so the statement that White House Black Market is facing competition from digital commerce retailers refers specifically to the last six years?

A. More pronounced today but yes.

Q. Am I correct in understanding that digital retailers have been around several decades?

MR. GOHEEN: Object to the form. Object to the form.

BY MR. DWYER:

Q. How long has Amazon been around?

MR. GOHEEN: Object to the form. If you know.

A. Amazon was in the '90s, early '90s.

BY MR. DWYER:

Q. How long has Amazon been selling women's apparel?

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digital commerce retailers?

A. I'd defer that to our marketing team. I'm accounting.

Q. What is your basis for your understanding that White House Black Market has experienced competition from digital commerce retailers?

A. My basis for understanding is in general meetings, we have all associates and from time to time our CEO may make comments. There's -- if you read publications Women's Wear Daily and the likes thereof you're going to find articles that address that.

I mean, it's knowledge I've obtained working in women's specialty retail. We recognize there's competition out there. I'm not the person who's trying to combat that or understand it or build a strategy. My responsibility is generating the financial records of the company to prepare a Q or K.

Q. Okay. If we can go back for a second, am I correct in understanding that Venus is spelled V-E-N-U-S?

A. Yes.

Q. Great. And for the sake of the court reporter, can you spell the name of the other

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MR. GOHEEN: Object to the form. If you know.

A. I can not speak specifically to that. I can tell you it has grown.

BY MR. DWYER:

Q. Am I correct in understanding from your prior answer you're not involved in efforts to combat competition from digital commerce retailers?

MR. GOHEEN: Asked and answered.

A. Yes. You're correct.

BY MR. DWYER:

Q. Let's move onto paragraph 8 of your declaration. What is your basis for the statement of this paragraph?

A. Information on the public domain.

Q. Did you -- how did you select these companies?

A. I actually went back and looked at various articles. I knew there have been numerous bankruptcies and I believe I likely googled bankruptcies in retail. This is not an all-inclusive list. This is just a list.

Q. So you -- how did you select from the results that your Google search generated as you decided what was to be included on the list?

14 (Pages 53 to 56)

1 **A. It was arbitrary. I was looking for a**  
 2 **representative sample. List would be more**  
 3 **comprehensive than what I stated.**

4 Q. What is the time period covered by these  
 5 recent bankruptcies?

6 **A. When you look at these bankruptcies these**  
 7 **are all -- I believe these are all within the last**  
 8 **two years.**

9 Q. Two years?

10 **A. Last two years, I believe.**

11 Q. Am I correct in understanding from your  
 12 prior answer you did this search yourself?

13 **A. Yes.**

14 Q. Am I correct in understanding half these  
 15 companies are not apparel retailers?

16 MR. GOHEEN: Object to form.

17 **A. You're correct. The point when you look**  
 18 **at this, this is all a function of declining**  
 19 **traffic.**

20 BY MR. DWYER:

21 Q. What is your basis for your statement this  
 22 is a function of declining traffic?

23 **A. Traffic ultimately drives sales.**

24 Q. How do you know -- do you have personal  
 25 knowledge that each of the eight bankruptcies

1 described in this paragraph was caused by declining  
 2 traffic?

3 **A. I do not.**

4 Q. Am I correct in my understanding that  
 5 Gorman stores is actually Gordman stores?  
 6 G-O-R-D-M-A-N?

7 **A. It may be a typo.**

8 Q. Okay. Just wanted to make sure my review  
 9 was correct. Is it correct Chico's and White House  
 10 Black Market are not affiliated with the companies  
 11 listed in this paragraph?

12 **A. That is correct.**

13 Q. They have no common corporate ownership;  
 14 is that correct?

15 **A. Correct.**

16 Q. Is it correct that there are numerous  
 17 retailers that are not in bankruptcy?

18 **A. Yes. There are.**

19 Q. In fact, many retailers are expanding  
 20 operations; is that correct?

21 MR. GOHEEN: If you know.

22 **A. Many, I think some would be a more**  
 23 **appropriate word.**

24 BY MR. DWYER:

25 Q. As you were preparing your declaration,

1 did you look for -- did you run a comparable Google  
 2 search for retailers that were expanding their  
 3 operations?

4 **A. I did not.**

5 Q. Did you make any effort to uncover  
 6 information about retailers expanding their  
 7 operations?

8 **A. No.**

9 Q. Move onto paragraph 9, what is your basis  
 10 for your statement in this paragraph?

11 **A. Specifically when I was researching this,**  
 12 **I seem to recall an article talking about**  
 13 **bankruptcies that have occurred and the store**  
 14 **closures that related to them. I do recall the**  
 15 **number was far in excess of a thousand store**  
 16 **closures, but it would have been as a result of the**  
 17 **Google search that I ran.**

18 Q. Do you know how many stores Gymboree is  
 19 closing?

20 **A. Without going back and referencing public**  
 21 **domain again, I cannot respond to that.**

22 Q. Do you know how many stores Gymboree will  
 23 continue to operate?

24 **A. No.**

25 Q. Do you know how many stores any of the

1 particular entries on -- in paragraph 8 are closing?

2 **A. Well, I think Radio Shack was closing**  
 3 **essentially all their stores, which is around 1400,**  
 4 **if I recall correctly.**

5 Q. You understand Radio Shack is closing all  
 6 their stores?

7 **A. Right. Limited is also listed here.**  
 8 **Limited closed all their stores. Limited is very**  
 9 **much of a White House Black Market-type retailer, or**  
 10 **excuse me, they were a White House Black Market-type**  
 11 **retailer. We were targeting the same type customer.**  
 12 **They've basically shut their business down.**

13 Q. So as we sit here today, you believe you  
 14 have an understanding as to how many stores The  
 15 Limited and Radio Shack are closing but not any of  
 16 the other stores on paragraph 8 of your declaration?

17 **A. At the time I prepared this declaration**  
 18 **when I looked at the article, that information was**  
 19 **there. I read it. I don't recall the specifics. I**  
 20 **can tell you in the aggregate it was more than a**  
 21 **thousand stores collectively for these stores.**

22 Q. Let's move onto paragraph 10 of your  
 23 complaint -- excuse me, of your declaration. How'd  
 24 you select June 13, 2017 as the date to use in your  
 25 calculation?

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1 **A. It was the date I was doing my**  
2 **declaration. I was drafting it.**

3 Q. Your declaration is actually signed seven  
4 days later; is that correct?

5 **A. That was the turnaround time before it**  
6 **went final, but when I did this declaration, it was**  
7 **June 13th, or excuse me, would have been the 14th.**

8 Q. Did you consider revising these  
9 calculations as you prepared the final of the  
10 declaration?

11 **A. Actually I did --**

12 Q. Why'd you decide not to do that?

13 **A. The evaluation would have gone lower for**  
14 **White House Black Market if I updated it and the**  
15 **decline I thought to be 20 to 30 million really**  
16 **wasn't relevant.**

17 Q. Am I correct in understanding that within  
18 the last year the stock price is as high as \$16.85  
19 per share?

20 **A. Yes.**

21 Q. That was around December last year,  
22 correct?

23 **A. I'd need to go back and look at the date,**  
24 **but at the time I drafted this declaration, I**  
25 **determined \$16.85 was the high.**

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1 Q. Okay. Why don't we introduce as Oliver  
2 3 --

3 MR. GOHEEN: 4, Oliver 4.

4 BY MR. DWYER:

5 Q. Excuse me, yes, Oliver 4, I'm sorry, yes,  
6 the Yahoo printout for the one-year period.

7 MR. GOHEEN: Which one is it? There seems  
8 to be two.

9 MR. DWYER: What? There are two. One is  
10 for a one-year period and one is for a  
11 five-year period. I wanted to look at the one  
12 for the one-year period.

13 **A. Before we look at this --**

14 MR. GOHEEN: Just let him ask a question.

15 **A. One moment. Before I look at this here,**  
16 **on the \$16.85, now I'm questioning the timeframe**  
17 **with the \$16.85 was, was it within the last one year**  
18 **or was it for a longer period of time that I was**  
19 **looking at?**

20 MR. GOHEEN: I think that's going to help  
21 us. Let's just move on.

22 **A. I have Exhibit 4 in front of me.**

23 **(Thereupon, the document was marked as**  
24 **Exhibit 4.)**  
25

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1 BY MR. DWYER:

2 Q. Okay. Based on Exhibit 4, is it correct  
3 that -- can you identify Exhibit 4 for me?

4 **A. It appears to be a printout from Yahoo**  
5 **Finance with a stock price as of 2:11 p.m. Eastern**  
6 **Time of --**

7 Q. Okay. And if you look at the historical  
8 data there, is it -- am I correct in my  
9 understanding that in the spring the stock price was  
10 around \$14 -- over \$14 a share?

11 **A. We're not looking at the same document.**  
12 **In the spring -- excuse me, looking at the chart.**

13 Q. Yeah, the chart. I'm sorry.

14 **A. The chart in the spring if you come**  
15 **straight across momentarily --**

16 MR. GOHEEN: Don't mark on it.

17 **A. Just looking.**

18 MR. GOHEEN: Don't mark on the exhibit.

19 **A. I'm not marking anything. That appears to**  
20 **be the case.**

21 BY MR. DWYER:

22 Q. Okay.

23 **A. It's hard to interpret a graph looking**  
24 **across without lines or anything of the nature. It**  
25 **appears --**

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1 Q. I apologize for the crudity of this. Is  
2 it also fair to say on the basis of this graph  
3 around May the stock price spent the entire year at  
4 above \$11 a share?

5 **A. Again, that appears to be the case looking**  
6 **at this graph. Without a ruler and some lines here**  
7 **it appears to be the case.**

8 Q. Thank you. If we could mark the other  
9 document Oliver 5, the other Yahoo printout.

10 (Thereupon, the document was marked as  
11 Exhibit 5.)

12 BY MR. DWYER:

13 Q. Can you identify this document for me?

14 **A. It's the same -- approximately, close to**  
15 **being the same as the prior document one minute**  
16 **later.**

17 Q. The primary difference is the chart in the  
18 document goes back five years rather than one year;  
19 is that correct?

20 **A. Yes.**

21 Q. Okay. Am I correct looking at this chart  
22 that the Chico's stock price spent almost the  
23 entirety of the last five years above \$11.32 a  
24 share?

25 MR. GOHEEN: Object to the form.

16 (Pages 61 to 64)

1 **A. That's what the graph would seem to**  
2 **indicate.**

3 BY MR. DWYER:

4 Q. And is it also the case that based on the  
5 graph Chico's stock price spent more than half of  
6 the last five years above about \$15 a share?

7 MR. GOHEEN: Object to the form.

8 **A. Looking at the graph that would appear to**  
9 **be the case.**

10 BY MR. DWYER:

11 Q. Thank you. Put those aside. Let's turn  
12 to paragraph 11 of your declaration. Do you recall  
13 whether this paragraph was included in the original  
14 draft of your declaration you prepared?

15 **A. The content would have been included in my**  
16 **original draft, yes. Was it verbatim, I can't speak**  
17 **to that. I may have made edits afterwards.**

18 Q. Okay. Was this put in the declaration --  
19 was putting this into the declaration your idea or  
20 was this an idea suggested by someone else?

21 MR. GOHEEN: Object to the form. You can  
22 answer if it does not disclose any  
23 communications with counsel.

24 **A. I have no comment.**  
25

1 sure the court reporter got it.

2 Okay. Going back to paragraph 11, can you  
3 walk me through the steps how you calculated the  
4 market value of White House Black Market?

5 **A. Yes.**

6 Q. Would you please do so?

7 **A. Yes. If you refer to -- in the**  
8 **declaration if you refer to Exhibit A, Exhibit A is**  
9 **the calculation that was made for this. I**  
10 **specifically looked at the trailing four quarters**  
11 **for the sales for Chico's FAS, each of those is**  
12 **listed here, and computed or derived the total sales**  
13 **for Chico's FAS for the totaling 12 quarters.**

14 **I replicated that looking specifically at**  
15 **White House Black Market, their sales for the**  
16 **previous four quarters, noting that the sales for**  
17 **White House Black Market represented what component**  
18 **they were of Chico's FAS. We'll get into actual**  
19 **calculations.**

20 **Once I had these two items, the total**  
21 **sales for Chico's FAS, the total sales for White**  
22 **House Black Market as of the end of the first**  
23 **quarter, all information in the public domain, I**  
24 **then looked back to the market cap, the market of**  
25 **Chico's FAS as of the closing stock price on**

1 BY MR. DWYER:

2 Q. You have no --

3 **A. I have no comment in that it -- I think my**  
4 **conversations were in the context of communications**  
5 **with counsel.**

6 Q. I'm struggling a little to understand that  
7 answer. Was it your idea to include this paragraph  
8 in this declaration?

9 MR. GOHEEN: Same objection. Same  
10 instruction.

11 **A. I have no comment.**

12 BY MR. DWYER:

13 Q. If we could briefly go back to the prior  
14 two exhibits, Exhibit -- Oliver 4 and 5, do you have  
15 any reason to believe the data included in either of  
16 these documents is inaccurate?

17 **A. No.**

18 MR. GOHEEN: Object to the form.

19 BY MR. DWYER:

20 Q. You can answer my question.

21 MR. GOHEEN: He did.

22 **A. No.**

23 BY MR. DWYER:

24 Q. Okay. Sorry. I just wasn't sure -- I  
25 know there was some cross talk. I wanted to make

1 **June 13th, which was \$9.43 times shares that were**  
2 **outstanding of 128 million, that implies a market**  
3 **cap for the total Chico's FAS entity of**  
4 **\$1.2 billion.**

5 **And if you were to look at the market cap**  
6 **expressed as a percent of total sales for Chico's**  
7 **FAS was .5, meaning that 1.2 billion divided into**  
8 **2.4 billion was .5, from a valuation perspective, a**  
9 **multiple of sales is a common measure for coming up**  
10 **with a valuation of an entity, one methodology.**

11 **This, I chose this approach simply because**  
12 **it was all information used from the public domain,**  
13 **but having completed that calculation, if the**  
14 **multiple for FAS was .5, I applied the same multiple**  
15 **times the White House sales to drive the**  
16 **413 million. This is simply a math exercise.**

17 Q. The sales in this chart, are those gross  
18 sales?

19 **A. Those are the sales, yes.**

20 MR. GOHEEN: Object to form. Gross sales.

21 **A. They are gross sales. They would exclude**  
22 **sales tax. It would be the sales. It would be net**  
23 **of any coupons that were -- it's a sales as we**  
24 **reported in our public filings for those respective**  
25 **quarters.**



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1 BY MR. DWYER:

2 Q. Why did you select gross sales as the  
3 measure?

4 **A. It's the only measure we track.**

5 Q. Do you not track net revenue by part of  
6 the company?

7 **A. Our revenue is sales.**

8 Q. What's the difference between gross sales  
9 and net revenue?

10 **A. By net revenue, what do you mean by net  
11 revenue?**

12 Q. Well, I mean, do you track, you know,  
13 revenue, net of expenses?

14 This is not getting any response. Would  
15 it be fair to say that your method is highly  
16 dependent on the stock price of Chico's?

17 MR. GOHEEN: Object to the form.

18 **A. The calculation is based on the stock  
19 price of Chico's as of close of market, June 13th.**

20 BY MR. DWYER:

21 Q. If you had used the 52-week high stock  
22 price of \$16.85, would that have produced a  
23 different valuation number?

24 **A. Yes.**

25 Q. Would it produce a valuation number of

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1 MR. DWYER: Are you instructing him not to  
2 answer?

3 **A. The -- if you used a stock price in April  
4 that was higher, the stock pricing higher was prior  
5 to us disclosing our first quarter results when we  
6 came out with our negative comps in the first  
7 quarter, and the market has valued us accordingly  
8 and it's reflected in the stock price.**

9 **The measure of the value of the entity is  
10 based upon how the market perceives us at a given  
11 point in time. The market is not giving us credit  
12 for a higher stock price that we had historically.  
13 Stock prices fluctuate over time and today with the  
14 headwinds and declining traffic and the negative  
15 comp sales we are seeing a lower stock price.**

16 Q. Are you familiar with Morning Star?

17 **A. Yes.**

18 Q. Are you aware Morning Star believes that  
19 Chico's stock price is undervalued?

20 **A. Many people have different opinions.**

21 Q. How did you select this metric for value  
22 of White House Black Market?

23 MR. GOHEEN: Object to the form. Asked  
24 and answered. He's already walked you through  
25 it.

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1 nearly 1.8 times four?

2 MR. GOHEEN: Object to form.

3 **A. It would be a math exercise, but I could  
4 easily do the math as you have already, I assume.**

5 BY MR. DWYER:

6 Q. Do you have any reason to believe that  
7 number I provided is not correct?

8 MR. GOHEEN: Object to form.

9 **A. I would need to make the calculation.**

10 BY MR. DWYER:

11 Q. But it would be more?

12 **A. It would be more.**

13 Q. And the amount that it would be more would  
14 be the amount that the stock prices differ?

15 **A. Yes.**

16 Q. The same would be true if you use the  
17 higher stock price from April, yes?

18 THE COURT REPORTER: I'm sorry?

19 BY MR. DWYER:

20 Q. The same would be true if you used any  
21 higher stock price such as the stock price from  
22 April?

23 MR. GOHEEN: Object to the form. Just  
24 like it would be lower if it was done today.

25 What's your point? You can answer if you want.

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1 **A. There are multiple methods for evaluation  
2 common measure back of the envelope computation.  
3 Common measure back of the envelop computation could  
4 be a measure of sales. Looking at the market, what  
5 the market capitalization was at FAS we  
6 extrapolated -- I extrapolated, there was no we.**

7 **Just I extrapolated and came up with this  
8 calculation on my own. There are alternative  
9 measures for valuations that could have been  
10 employed that would have been much more engaged, but  
11 I seriously believe you would have come up with  
12 something around the same metric, the same estimate.**

13 BY MR. DWYER:

14 Q. What are some of those other methods?

15 **A. One would be a multiple of your cash flow.  
16 You might see a retailer go out six to seven times  
17 cash flow. We do not disclose publicly the cash  
18 flow of any of our entities.**

19 Q. Is what you just described ultimately the  
20 discounted cash flow method?

21 **A. Well, ultimately that's -- that would be  
22 another methodology you could look at. You could --**

23 Q. Okay. Right. So the discounted cash flow  
24 method is another method you could have used?

25 **A. You could have come to the valuation using**

18 (Pages 69 to 72)

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1 a discounted cash flow of the entity on a future  
2 basis. That would have included projected future  
3 sales, the likes thereof and profitability of the  
4 company in the future.

5 Q. Could you also use the net asset value  
6 method?

7 A. I would not have used that for a retail  
8 company that's largely not really an asset-based  
9 business.

10 Q. So did you consider using the net asset  
11 value method and reject it?

12 A. I did not consider using it.

13 Q. Did you consider using a discounted cash  
14 flow method and reject it?

15 A. Yes, I did reject it.

16 Q. Why did you reject it?

17 A. The -- ultimately to have made that  
18 calculation I probably would have hired a valuation  
19 firm to come in and do a valuation of the entity and  
20 as a back-of-the-envelope calculation that would be  
21 a good proxy for valuation. This is the approach I  
22 chose.

23 Q. Why did you -- what is the basis of your  
24 belief the back-of-the-envelope method would be a  
25 good proxy for value?

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1 A. Because many valuations are typically  
2 looked at as a multiple of sales.

3 Q. What is the basis for your belief -- am I  
4 correct you believe if a discounted cash flow method  
5 had been done it would have given you a similar  
6 result?

7 A. It would have been in the ballpark. I  
8 mean, you could have done multiple valuations. As I  
9 stated, had we engaged a valuation firm to value  
10 White House Black Market -- by the way, we never  
11 have -- you might have come up with a different  
12 answer.

13 Q. Sitting here today you don't know whether  
14 you would have or would not have?

15 A. Short of having done the complete exercise  
16 of a full blown valuation using a discounted future  
17 cash flow, I would not know the valuation that would  
18 yield.

19 Q. Okay. As CAO of Chico's you would have  
20 had access to the data that you would have needed to  
21 do this type of analysis, correct?

22 A. Yes. I could have -- we could have done  
23 that. We would have had to make some estimations as  
24 to the future projected sales of the company itself  
25 and so I would have had to go back and work with

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1 our -- others to kind of come up with those  
2 projections, future sales of Chico's FAS and the  
3 ultimate projected profitability in each of those  
4 years, then look at that on a discounted basis.

5 Q. You could have done that, though, correct?

6 A. We could have done that. It would have  
7 been more than a month-long exercise.

8 Q. And once you had done those steps you then  
9 could have run your own discounted cash flow  
10 analysis; is that correct?

11 MR. GOHEEN: Object to form. Move on.

12 Okay.

13 BY MR. DWYER:

14 Q. I'd actually like to continue questioning  
15 him on the subject. It's one of the core subjects  
16 we brought you all to Florida in the first place.

17 Could you have brought -- I'm being told  
18 we have five minutes left. Why don't we take a --  
19 five minutes left, so let's do five minutes more  
20 questioning, then we'll go.

21 So Mr. Oliver, if you had had the data, if  
22 you had done the estimates, could you yourself have  
23 done discounted cash flow analysis?

24 A. I could have done -- I would have worked  
25 with a consultant in making that calculation. We

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1 would have provided all the input. We would have  
2 worked very closely with them in preparing a  
3 valuation.

4 Q. Why would you have had to work with a  
5 consultant?

6 A. Because they're specialists that deal in  
7 valuations, period. Now, I will tell you in the  
8 same time one of the methods they will have in their  
9 final valuation report will be a multiple of sales.

10 Q. Why were you qualified to use this method  
11 to value the company but would not have been  
12 qualified to do a discounted cash flow analysis?

13 A. The -- because a multiple of sales is a  
14 calculation you could run. If you looked at --

15 Q. What is it about a discounted cash flow  
16 analysis you would not have been able to do?

17 A. I would have done one. I could have run  
18 the entire calculation myself, put it together, but  
19 I still would have had it reviewed by a professional  
20 valuation firm.

21 Q. Why is that?

22 A. Because that's what they do. You know, I  
23 wouldn't try to do my own heart surgery. I would  
24 consult with the expert to ensure I had that number  
25 nailed.

19 (Pages 73 to 76)

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1 Q. Did you consult with an expert about the  
2 calculation -- valuation calculation you did?

3 **A. There's nothing complex about what I did.**

4 Q. What is complex about discounted cash flow  
5 analysis that would have required you to consult  
6 with an expert?

7 **A. The complexity is in terms of doing an**  
8 **valuation, you know, I felt confident I could have**  
9 **run the calculation in its entirety. I would have**  
10 **gone to an expert and had him come back and review**  
11 **it.**

12 **They would have gone out to the market to**  
13 **look at valuations in recent deals that have**  
14 **happened. There hasn't been a lot of deals**  
15 **happening, but I would look to them. That's**  
16 **something they do every day, something I might run**  
17 **periodically.**

18 Q. So --

19 **A. And yeah, anyway. I think I answered your**  
20 **question.**

21 Q. Is going out in the market and looking at  
22 recent deals something you could have done?

23 **A. I would have gone to a valuation firm to**  
24 **have them provide information to me because they're**  
25 **out there tracking that.**

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1 Q. Is that information you could have tracked  
2 yourself?

3 **A. I would have had -- I would have -- it**  
4 **would have been much easier to go to a valuation**  
5 **firm to track it as part of their core competency.**  
6 **I probably could have found deals in the market, and**  
7 **come up with multiples and spent hours attempting to**  
8 **do that on my own versus rely on experts that**  
9 **basically built the databases and done that in the**  
10 **ordinary course as part of their core competency, I**  
11 **guess.**

12 Q. How close to the five minutes are we?  
13 We're almost done, right?

14 **A. Two minutes.**

15 Q. Two minutes. I think why don't we just  
16 take a break now. We can change the tape. Let's go  
17 off the record.

18 THE VIDEOGRAPHER: All right. We are now  
19 going off the record at 11:25 a.m.

20 (Off the record.)

21 THE VIDEOGRAPHER: We are now back on the  
22 record with Media Unit 2 of the deposition of  
23 David Oliver at 11:37 a.m.

24 BY MR. DWYER:

25 Q. Thank you. Mr. Oliver, did Chico's pay a

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1 dividend earlier this year?

2 **A. Yes.**

3 Q. Was that dividend 16 and a half cents a  
4 share?

5 **A. Sixteen and a half cents would have been**  
6 **two dividends. Our annual rate is currently 33**  
7 **cents. So on a quarterly basis we do one-fourth of**  
8 **that.**

9 Q. Okay. So Chico's paid two dividends that  
10 total 16 and a half cents a share this year; is that  
11 correct?

12 **A. I believe that's correct, yes.**

13 Q. Okay. Then given the number of  
14 outstanding shares, that adds up to around  
15 \$21 million?

16 **A. Correct.**

17 Q. At the end of last year -- excuse me, at  
18 the end of the last fiscal year did Chico's have  
19 over 142 million in cash and cash equivalents?

20 **A. Yes.**

21 Q. And for that fiscal year did Chico's have  
22 over 230 million in net cash while operating  
23 activities?

24 **A. I would go back and look at the number but**  
25 **that sounds about right.**

Page 80

1 Q. And based on your prior answer, am I  
2 correct understanding Chico's paid \$42 million in  
3 dividends last year?

4 **A. That is approximately the number. I'd**  
5 **need to look at the number but \$42 million sounds**  
6 **about right on.**

7 Q. If we hop onto Oliver 2, I think 37 out of  
8 89 at this time. No, it's not. 45 out of 89.

9 **A. 42,000,254, so right on.**

10 Q. And is it correct that Chico's did stock  
11 buybacks of almost \$102 million this year?

12 **A. Yes.**

13 Q. Thank you. You can put that aside.

14 All right. Turning to paragraph 12 of  
15 this complaint -- excuse me, did it again, this  
16 declaration, was this paragraph in your original  
17 draft of the declaration?

18 **A. I don't recall.**

19 Q. Was it your idea to put this -- the  
20 discussion of this topic into the declaration?

21 **A. I don't recall. I had a working session**  
22 **with our counsel. My understanding of what the**  
23 **information contained here came from that. I don't**  
24 **recall specifically was it before or after. I**  
25 **largely, as I indicated earlier, drafted this after**

20 (Pages 77 to 80)

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1 **my initial consultation with counsel, the specifics**  
2 **which came first, I don't recall.**

3 Q. On the basis of your prior -- am I  
4 recalling your prior testimony correctly that the  
5 basis for the statement that Plaintiff seeks  
6 recovery for herself and the class up to  
7 \$360 million in this paragraph is the conversation  
8 you had with counsel?

9 **A. Yes.**

10 Q. Is there any other basis for that  
11 statement?

12 **A. No. That's the information that was**  
13 **conveyed to me.**

14 Q. Did you review the complaint in this  
15 action?

16 **A. Did I look at -- did I -- no, I did not**  
17 **review the Plaintiff's -- I did not review any**  
18 **documents or anything of that nature.**

19 Q. Okay.

20 **A. For the Plaintiff.**

21 Q. Is it fair to say that the opinion you  
22 expressed in this paragraph assumes a \$360 million  
23 judgment against White House Black Market?

24 **A. No. Says up to.**

25 Q. Okay. The second sentence of this

Page 82

1 paragraph says: A judgment of this size equals  
2 nearly 90 percent of White House Black Market's  
3 estimated market value.

4 Is that accurate? Have I read that  
5 statement accurately?

6 **A. Yes.**

7 Q. Does this sentence assume a judgment of  
8 360 million against White House Black Market?

9 **A. If it were up to 360 million that would be**  
10 **the case.**

11 Q. Right. Is it correct that a judgment of  
12 less than 360 million would not be nearly 90 percent  
13 of White House Black Market's estimated market  
14 value?

15 **A. That's correct.**

16 Q. Okay. And is it correct that a judgment  
17 of less than 360 million might in fact be a result  
18 of this action if it proceeds forward?

19 **A. I'm not speculating what the judgment of**  
20 **this action might be.**

21 Q. Not asking you to speculate what the  
22 judgment might be. I'm asking you to state -- that  
23 is state the fact is it possible the 360 million  
24 might not be recovered?

25 MR. GOHEEN: Object to the form. Calls

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1 for speculation.

2 BY MR. DWYER:

3 Q. Are you -- you can still answer my  
4 question.

5 MR. GOHEEN: If you can answer.

6 **A. I would be speculating if I were to**  
7 **indicate what the judgment might ultimately be in**  
8 **this type of case. It's my understanding it can be**  
9 **up to 360 million and my statement, the context of**  
10 **my statement was a judgment of 360 million would be**  
11 **90 percent of the market of the company. To your**  
12 **point, to your point, I mean, until it's over, it's**  
13 **not over.**

14 BY MR. DWYER:

15 Q. What percentage of the market cap of White  
16 House Black Market would a judgment of zero dollars  
17 be?

18 **A. Well, zero dollars would be zero.**

19 Q. What percentage of the market cap of White  
20 House Black Market would a \$36 million judgment be?

21 **A. It's a math exercise. You could calculate**  
22 **it.**

23 Q. Would it be less than 90 percent of the  
24 market capitalization of White House Black Market as  
25 you calculated it?

Page 84

1 **A. Yes.**

2 Q. Would a zero-dollar judgment significantly  
3 impact White House Black Market's ability to survive  
4 -- concerned?

5 **A. Would a zero judgment --**

6 Q. Yeah. Would a zero-dollar value judgment  
7 significantly impact White House Black Market's  
8 ability to survive with the going concern?

9 **A. It would have no impact.**

10 Q. Would a \$36 million judgment significantly  
11 impact White House Black Market's ability to survive  
12 with the going concern?

13 MR. GOHEEN: Object to the form.

14 **A. Respond to that?**

15 MR. GOHEEN: Yes.

16 **A. \$36 million would be a headwind but it**  
17 **would not --**

18 BY MR. DWYER:

19 Q. Headwind.

20 **A. It would not limit the company from**  
21 **continuing as a going concern.**

22 Q. Okay. What is the basis for that  
23 statement?

24 **A. Looking at the cash flow of the business**  
25 **that it generates. \$36 million, I mean, it would be**

21 (Pages 81 to 84)



Page 85

1 **a headwind you would not want to sustain. It**  
 2 **might -- it would be limiting, but it would not**  
 3 **be -- it would not result in a going concern issue.**

4 Q. Am I correct in understanding that your  
 5 calculation that a \$360 million judgment would equal  
 6 90 percent of White House Black Market's estimated  
 7 market value is based on your estimate of White  
 8 House Black Market's current market value?

9 **A. The calculation, Exhibit A, it's based**  
 10 **upon the calculation Exhibit A, yes.**

11 Q. And that, in turn, is based on Chico's  
 12 current stock price, right, or Chico's stock price  
 13 at the time of the declaration?

14 **A. Yes.**

15 Q. Is that correct?

16 **A. Yes.**

17 Q. By the time any judgment is entered in  
 18 this action, Chico's stock price could be different  
 19 than it was at the time of this declaration; is that  
 20 correct?

21 **A. Yes.**

22 Q. So your opinion about the value of White  
 23 House Black Market could then be different as well,  
 24 correct?

25 **A. Yes.**

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1 Q. And so the percentage of White House Black  
 2 Market's net estimate market value could be  
 3 different then as well?

4 **A. Yes.**

5 Q. You can move onto paragraph 13 of your  
 6 declaration.

7 Do you recall whether this paragraph was  
 8 included in your original draft of the declaration?

9 **A. I do not recall it was in the original**  
 10 **draft or a subsequent draft based upon counsel. The**  
 11 **information stated here is based on my communication**  
 12 **with counsel.**

13 Q. You don't recall whether it was in your  
 14 initial draft or subsequent draft?

15 **A. The time it would have made it into the**  
 16 **draft I do not recall, but the information contained**  
 17 **here was based on my -- the communication that**  
 18 **information had been provided.**

19 Q. Okay. If we could very briefly go back to  
 20 paragraph 12, then I promise we'll move forward.

21 Would it be correct to say that your  
 22 90 percent estimate is based off of the speculation  
 23 of the judgment of 360 million?

24 MR. GOHEEN: Object to form.

25 **A. It's a statement of fact that if it were**

Page 87

1 **360 million it would be roughly 90 percent of the**  
 2 **valuation.**

3 BY MR. DWYER:

4 Q. Right. Would you agree with my  
 5 characterization that the statement if it were  
 6 360 million is a speculative statement?

7 MR. GOHEEN: Object -- same objection.

8 Asked and answered. Come on. Let's go. Are  
 9 you saying you're not seeking 360 million? If  
 10 you're not then let's just move on.

11 MR. DWYER: I'm asking if the sentence he  
 12 just said, which was phrased in subjunctive  
 13 mood is, in fact, a speculative or  
 14 hypothetical?

15 MR. GOHEEN: He answered your question.  
 16 Let's go.

17 MR. DWYER: He didn't answer my question.

18 MR. GOHEEN: Yes, he did. It's asked and  
 19 answered.

20 MR. DWYER: Are you directing him not to  
 21 answer?

22 MR. GOHEEN: If you want the court  
 23 reporter to read his answer back that will be  
 24 his next answer.

25 **A. My statement here simply is it's my**

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1 **understanding based on conversation with counsel it**  
 2 **could be up to 360 million. How counsel arrived at**  
 3 **that number I'm oblivious to.**

4 BY MR. DWYER:

5 Q. Okay. All right. Move back to 13, in  
 6 paragraph 13 of your declaration you reference a  
 7 list of consumers who made a purchase, return or  
 8 similar transaction during the relevant time period.

9 Did you help generate that list?

10 **A. No.**

11 Q. Have you reviewed that list?

12 **A. No.**

13 Q. What is your basis for your understanding  
 14 of what the list contains?

15 **A. Communication from counsel.**

16 Q. You have no basis for stating this  
 17 paragraph other than the information conveyed to you  
 18 by counsel?

19 **A. I've done nothing to substantiate the**  
 20 **information.**

21 Q. You have no reason to believe the  
 22 statements in this paragraph are true other than the  
 23 fact you trust counsel?

24 MR. GOHEEN: Object to the form.

25 **A. My basis for the statement is**

22 (Pages 85 to 88)



Page 89

1 **communication with counsel.**

2 BY MR. DWYER:

3 Q. Okay. You have no personal knowledge  
4 beyond what was conveyed to you by your counsel as  
5 to the subject of this paragraph of your  
6 declaration?

7 **A. I have not seen anything that was produced  
8 and provided.**

9 Q. Going to do something slightly unusual, go  
10 out of order. Go to paragraph 15 of your  
11 declaration next.

12 **A. Okay.**

13 Q. Was this paragraph in your original draft  
14 of the declaration?

15 **A. Again, I don't recall the specific -- as  
16 stated, when I did my initial draft I believe was on  
17 the 14th. We finalized just a few days thereafter.  
18 What occurred on what day are based upon subsequent  
19 input from counsel, the timing thereof. My  
20 knowledge of the fact they have the option, this is  
21 something I know we do not track, whether it's email  
22 or a receipt.**

23 **There's not a business reason per se for  
24 us to track this but -- but the consumer can opt in  
25 one or the other or both.**

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1 Q. Okay. What do you mean you do not track  
2 this information?

3 **A. I am not tracking anything here under my  
4 job responsibilities, but in the ordinary course as  
5 part of this, I understand that we are not -- we  
6 don't have an audit trail that would tell us in  
7 which bucket -- which receipt the consumer received.**

8 Q. What do you mean by audit trail?

9 **A. Something you can independently come  
10 through and verify, I guess. Maybe I should use the  
11 word --**

12 Q. Are you saying you don't track this  
13 information in your department or that White House  
14 Black Market doesn't track this information?

15 **A. I can say White House is not tracking  
16 that. If it were -- I'm not tracking that.**

17 Q. Was it your -- were you the one who  
18 decided to discuss the substantive subject of this  
19 paragraph in your declaration?

20 MR. GOHEEN: If you can answer that  
21 without disclosing attorney-client  
22 communications, you can. Otherwise I instruct  
23 you not to answer.

24 **A. Well, as stated previously, in preparing  
25 for this conversation or this declaration I had**

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1 **multiple -- I did consult with our internal counsel  
2 and where I included or didn't, I don't recall. I  
3 know --**

4 BY MR. DWYER:

5 Q. You don't recall whether this was your  
6 decision or whether this was recommended to you by  
7 counsel?

8 **A. I do not recall specifically. I know it  
9 was in the final draft, you know, I went through and  
10 I had an initial meeting with counsel. I was  
11 told --**

12 MR. GOHEEN: No. Don't disclose any  
13 communication.

14 **A. Okay. Okay. I had an initial meeting --  
15 following that meeting I prepared a draft and  
16 returned it to counsel.**

17 BY MR. DWYER:

18 Q. All right.

19 **A. Largely --**

20 Q. Sorry.

21 **A. No, I was going to say I returned it to  
22 counsel, but I reviewed it a final time and that was  
23 about it.**

24 Q. Okay. Where does White House Black Market  
25 store email receipts?

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1 **A. Where does White House Black Market store  
2 what?**

3 Q. Store email receipts?

4 **A. I don't know that they do. The email  
5 receipts themselves, I mean.**

6 Q. Do you know that they don't?

7 **A. The email, the emails that went to the  
8 consumer, I don't know that they -- I don't know  
9 that they do and I don't know that they don't.**

10 Q. You have no knowledge one way or the other  
11 whether those emails are stored somewhere?

12 **A. That's outside my area of responsibility.  
13 I would -- you would have to talk to someone else.**

14 Q. Okay. Do you know -- where does White  
15 House Black Market store data showing the email  
16 receipt was sent for a particular transaction?

17 **A. Again, you would need to consult with  
18 someone who has oversight of that. That's not in  
19 the core part of accounting and finance.**

20 Q. You don't know one way or the other  
21 whether that data is stored or not stored?

22 **A. I do not have direct knowledge.**

23 Q. If that data were stored somewhere, you  
24 wouldn't know where it was stored?

25 **A. That is correct.**

23 (Pages 89 to 92)

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1 Q. All right. Is determining the -- would  
2 determining whether email receipts are stored  
3 somewhere have been important to you had you  
4 investigated the statement in paragraph 15 of this  
5 declaration?

6 MR. GOHEEN: Object to the form.

7 **A. No. That would not have been important to**  
8 **me.**

9 BY MR. DWYER:

10 Q. All right. Your statement in the  
11 paragraph says that: White House Black Market has  
12 no way to determine which customers on the list it  
13 produced in this case were issued a hard copy  
14 receipt versus an email receipt.

15 Have I read that correctly?

16 **A. You have.**

17 Q. Would knowing whether the emails that were  
18 sent to people who received an email receipt were  
19 stored in some place be important to you in  
20 determining whether or not the statement: White  
21 House Black Market has no way to determine which  
22 customers on the list it produced in this case were  
23 issued a hard copy receipt versus an email receipt  
24 is in fact a true statement?

25 MR. GOHEEN: I think you're going to have

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1 **produced in the case are hard copy or email. Okay.**  
2 **That's my understanding that I gained in preparation**  
3 **for this deposition.**

4 Q. And as you put this statement reflecting  
5 that understanding into a declaration, which you  
6 signed under penalty of perjury, did you conduct any  
7 investigation to determine the truth or falsity of  
8 that statement?

9 **A. I did not.**

10 Q. If it were true that White House Black  
11 Market had in some place a cache of these -- had  
12 these email stored in some place, would that impact  
13 the truth of the statement that White House Black  
14 Market has no way to determine who received an email  
15 receipt?

16 **A. And if I was provided wrong information**  
17 **and that did exist, you're correct.**

18 Q. So if there was an email cache somewhere  
19 containing these emails, this statement would be  
20 false?

21 MR. GOHEEN: Object to the form. That's  
22 not what he said.

23 **A. My statement is based upon in preparation**  
24 **for this deposition what I learned talking with**  
25 **people that I understand were knowledgeable,**

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1 to break that up in about eight parts. Object  
2 to the form.

3 BY MR. DWYER:

4 Q. All right. Let me rephrase. Is it  
5 correct to characterize the upshot of this paragraph  
6 that White House Black Market doesn't have the  
7 ability to determine who on the list that was  
8 produced received an email receipt?

9 **A. Restate your question once again.**

10 Q. Okay. Is it accurate to understand this  
11 paragraph as saying that White House Black Market  
12 does not have the ability to determine which of the  
13 customers on the list that was produced received an  
14 email receipt?

15 **A. Is that a requirement for me to make the**  
16 **statement, no.**

17 Q. I'm sorry?

18 **A. I said is that a requirement for me to**  
19 **make this statement, no, I don't believe that it is.**

20 Q. No, no. We jumped ahead a couple  
21 questions. I was simply asking was that an accurate  
22 paraphrase of your statement in this paragraph?

23 **A. Well, let me respond in this manner: The**  
24 **statement I made, White House Black Market has no**  
25 **way to determine which customers on the list**

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1 **feedback that I have, is we did not have that**  
2 **capability.**

3 BY MR. DWYER:

4 Q. But you don't, in fact, know whether White  
5 House --

6 **A. I have not independently confirmed that.**

7 Q. Similarly, if there were a trove of data  
8 somewhere showing whether emails had been sent but  
9 not the emails themselves, would that affect the  
10 truth of this statement?

11 MR. GOHEEN: Object to the form.

12 **A. The statement made was based on**  
13 **information I had at the time I prepared this**  
14 **declaration. If it were subsequently determined**  
15 **there was a trove of emails, then the statement**  
16 **would be wrong. It does not change the fact that**  
17 **that was my understanding at the time I made this**  
18 **declaration.**

19 BY MR. DWYER:

20 Q. When you were drafting this declaration  
21 did you consider putting a qualifier in this  
22 paragraph to say it is my understanding that White  
23 House Black Market has no way to determine which  
24 customers on the list, et cetera, et cetera?

25 **A. If I had -- that would have been**

24 (Pages 93 to 96)

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1 **appropriate to put the qualifier in there, yes.**

2 Q. If you had, but did you feel it was  
3 appropriate to put in the qualifier?

4 **A. It was not put in there.**

5 Q. I know it wasn't put in there.

6 **A. It was not -- it was not contemplated at  
7 the time.**

8 Q. Okay. Why didn't you feel it was  
9 appropriate to put the qualifier in?

10 **A. As stated, when I drafted this I drafted  
11 it in free form, shot it over to counsel and we  
12 pretty much went with it. We turned it very quick.  
13 It was not included.**

14 **You're asking was there a pensive moment,  
15 no, there was not a pensive moment should I include  
16 this or not include this. It wasn't the case. I  
17 made a statement of fact as I understood them at the  
18 time.**

19 Q. Are you in the habit of making factual  
20 statements in declarations that are sworn under  
21 penalty of perjury that you cannot actually verify  
22 the truth or falsity of?

23 MR. GOHEEN: Object to the form.

24 **A. I do not independently verify everything  
25 in our financial records. I do rely on the**

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1 **surprise me.**

2 BY MR. DWYER:

3 Q. Can we introduce what I believe is the  
4 last exhibit, unless Barry has something, which is  
5 the email from Tony Love to me dated July 12th,  
6 2017.

7 (Thereupon, the document was marked as  
8 Exhibit 6.)

9 BY MR. DWYER:

10 Q. Let me know when you've had a chance to  
11 review it to your satisfaction.

12 **A. Okay. I've reviewed the first Tony Love  
13 email, not the second.**

14 Q. Okay. Can you identify the document in  
15 front of you for the record?

16 **A. It's --**

17 MR. GOHEEN: No, he cannot identify it.

18 You can identify it. He's not a party to the  
19 document. You can identify --

20 BY MR. DWYER:

21 Q. Can you describe -- can you tell me what  
22 you appear to be looking at?

23 **A. I'm looking at a document provided to me  
24 that appears to be from Tony Love to you and  
25 basically recapping what you've stated, that even to**

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1 **expertise of others who have direct knowledge, but  
2 that is my understanding.**

3 BY MR. DWYER:

4 Q. Am I correct in understanding that you do  
5 not personally have the technological capability to  
6 locate email receipts or related data in the  
7 databases of White House Black Market or Chico's?

8 MR. GOHEEN: Object to the form.

9 **A. I personally do not.**

10 BY MR. DWYER:

11 Q. If I told you that White House Black  
12 Market counsel recently told us that White House  
13 Black Market claimed it would take three people  
14 working part-time for six to eight weeks to track  
15 down email receipts or data showing which  
16 transactions and receipts were sent, would that  
17 surprise you?

18 MR. GOHEEN: Object to the form. Calls  
19 for speculation.

20 BY MR. DWYER:

21 Q. You can answer.

22 MR. GOHEEN: If you know.

23 **A. I mean, I have no idea. Would it surprise  
24 me, I mean, you know, I don't believe that to be the  
25 case. So if that were the case, yes, it would**

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1 **begin to extract this data, I've not talked with  
2 anyone within Chico's FAS or White House or any  
3 other entity of our company that previously would  
4 have given me knowledge that might even be an  
5 option.**

6 **It would appear that Tony has some type of  
7 conversation there might be a window to try to  
8 attack this, but would that surprise me based on  
9 information I have, yes.**

10 Q. Do you have any reason to believe this  
11 email is not authentic?

12 MR. GOHEEN: Object to the form. He's  
13 never seen it before today. He has no basis to  
14 answer that question, no basis whatsoever. If  
15 you can provide a factual foundation for it,  
16 maybe but other than that he has no way to  
17 authenticate a document he's not party to. Can  
18 you?

19 BY MR. DWYER:

20 Q. You can still answer my question.

21 **A. I mean, I'm speculating, but --**

22 MR. GOHEEN: Don't speculate.

23 **A. Well, I mean, well, my comment it appears  
24 to be a legitimate email but I have no direct  
25 knowledge it is. I'm sure there's parties in here**

25 (Pages 97 to 100)

1 **that could confirm that it is.**

2 BY MR. DWYER:

3 Q. Do you have any reason to believe the  
4 factual statements made in the first, the top email  
5 in this thread concerning the review are inaccurate?

6 MR. GOHEEN: Same question. If you know,  
7 you can. I direct you not to speculate.

8 **A. I have no basis to say if it's accurate or**  
9 **inaccurate.**

10 THE VIDEOGRAPHER: You're in the shot a  
11 lot.

12 MR. GOHEEN: Move it over then.

13 BY MR. DWYER:

14 Q. Who -- if you wanted to attempt to verify  
15 the truth of these statements, to whom would you  
16 speak?

17 **A. I would personally go back to Nancy**  
18 **Holland and visit with her.**

19 Q. Did you make any effort to verify the  
20 representations that were made to you by counsel  
21 that led to the statement in paragraph 15 with Nancy  
22 Holland?

23 **A. I didn't know these statements until**  
24 **moments ago.**

25 Q. No, I'm sorry. Going back to paragraph 15

1 BY MR. DWYER:

2 Q. Who at Chico's would have knowledge of the  
3 subject of paragraph 15 of your declaration?

4 MR. GOHEEN: Same objection. Calls for  
5 speculation.

6 **A. It would be speculation but it would be**  
7 **somebody at the corporate level if there is other**  
8 **people.**

9 BY MR. DWYER:

10 Q. But Nancy Holland, Nancy Holland would  
11 have knowledge of the contents of paragraph 15; is  
12 that accurate?

13 MR. GOHEEN: Object to the form.

14 **A. I'd be speculating, but that's who I would**  
15 **go to personally.**

16 BY MR. DWYER:

17 Q. Do you have any personal knowledge of how  
18 the search described in Mr. Love's email would take  
19 place?

20 **A. I have no personal knowledge.**

21 Q. Who would you speak to to obtain that  
22 knowledge?

23 **A. I would talk with counsel.**

24 Q. Anyone besides counsel to whom you would  
25 speak to try to obtain that knowledge?

1 in your declaration, did you make any effort to  
2 verify those statements with Nancy Holland?

3 **A. No. I did not.**

4 Q. Did you make any efforts to verify those  
5 statements with anyone?

6 **A. Outside --**

7 Q. Outside of counsel.

8 **A. Outside of counsel I did not.**

9 Q. Okay. Is there anyone other than Nancy  
10 Holland whom you would have spoken to to verify the  
11 statements in paragraph 15 of your declaration?

12 **A. I would have to do some questioning, but**  
13 **if there is I'd have to go determine who they are.**  
14 **That's the person I would have -- you asked who I**  
15 **would have gone to, I would have gone to Nancy.**

16 Q. Is there anyone else at White House Black  
17 Market who would have personal knowledge of the  
18 subject of paragraph 15 in the declaration?

19 MR. GOHEEN: Object to the form. Calls  
20 for speculation.

21 **A. When you state White House Black Market,**  
22 **White House Black Market, there's no one at White**  
23 **House Black Market that would know that,**  
24 **specifically.**

25

1 **A. I'd start with counsel, always start with**  
2 **counsel.**

3 Q. Okay. Do you have any personal knowledge  
4 as to whether there's a faster way to conduct a  
5 review than the one described in Mr. Love's email?

6 **A. I have no knowledge.**

7 Q. To whom would you speak to obtain that  
8 knowledge?

9 **A. I would not speak to anyone. I would not**  
10 **take that on as my responsibility. I would allow**  
11 **counsel to basically address that. They could take**  
12 **it up with others within the organization.**

13 Q. All right. So you have -- withdrawn.

14 Have you ever personally operated a  
15 point-of-sale system that White House Black Market  
16 used in U.S. stores?

17 **A. No.**

18 Q. Did you help program the point-of-sale  
19 system White House Black Market uses in its U.S.  
20 stores?

21 **A. No.**

22 Q. Did you have any involvement how this  
23 system is programmed?

24 **A. No.**

25 Q. Did you have any involvement -- do you



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1 have any -- do you have any involvement how that  
2 system operates?

3 **A. No.**

4 **Q.** Have you ever had involvement with how  
5 that system operates?

6 **A. No.**

7 **Q.** Are you in charge of maintaining the data  
8 generated by the operation of White House Black  
9 Market point-of-sales system?

10 **A. Maintaining the data, not within the four**  
11 **walls. I get the data, the output that goes into**  
12 **the general ledger. No is the response to the**  
13 **question.**

14 **Q.** Okay. Do you know whether the system  
15 prior to Fujitsu maintained email receipts?

16 **A. Sitting here today I would be speculating**  
17 **to respond to that. I don't have any direct**  
18 **knowledge right now.**

19 **Q.** You do not. Okay. Do you know whether  
20 the system prior to Fujitsu maintained data showing  
21 that email receipts had been sent?

22 **A. I have no direct knowledge.**

23 **Q.** Do you know whether using the system prior  
24 to the one, the current Fujitsu system, White House  
25 Black Market had a way to determine which customers

Page 106

1 on the list -- which customers it sold product to  
2 received a hard copy receipt versus email receipt?

3 **A. No.**

4 **Q.** Setting aside the lack of knowledge of a  
5 specific person, is there a department within  
6 Chico's to which you would go to find -- to verify  
7 the veracity of the statements in paragraph 15 of  
8 your declaration?

9 **A. You're asking if I were going to verify?**

10 **Q.** Yeah, if you -- let me withdraw and  
11 rephrase.

12 If you were going to go about verifying  
13 the truthfulness of the statement in paragraph 15 of  
14 your declaration, is there a department at Chico's  
15 that you would go to to seek an answer for that?

16 **A. As stated earlier, I would not undertake**  
17 **that as part of my responsibility to go back and to**  
18 **drill down into the IT point-of-sale area to**  
19 **understand what is or what isn't available. I'd**  
20 **consult with counsel and they would direct that**  
21 **action. You're crossing an area outside my**  
22 **responsibility.**

23 **Q.** Similarly, if you look to verify the truth  
24 or falsity of the statement of Mr. Love's email,  
25 would you go -- is there a department at Chico's

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1 that you would go to to verify that?

2 **A. I would not go directly to anyone other**  
3 **than general counsel, and counsel would, you know,**  
4 **they -- I would assume, I'm assuming here that Tony**  
5 **Love got that from counsel who in turn has been**  
6 **communicating with someone else in the organization.**

7 **Given the date, this is July 12th, that is**  
8 **basically a month after my initial draft of this**  
9 **declaration. I would kick it back to counsel and I**  
10 **would not be engaged.**

11 **Q.** Do you recall how many drafts your  
12 declaration went through?

13 **A. I doubt if it went through more than two**  
14 **at the most.**

15 **Q.** So the initial draft you proposed and the  
16 final draft.

17 **A. The initial draft proposed, it was pretty**  
18 **much that quick. It was bam, bam, we knocked it out**  
19 **and we were done.**

20 **Q.** So just to be clear, you propose the  
21 initial draft, second draft of the document is the  
22 version that was submitted in this case; is that  
23 accurate?

24 **A. I doubt -- there likely -- I can't speak**  
25 **to that complete recollection, but it was not more**

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1 **than two drafts past my original draft.**

2 **Q.** Okay.

3 **A. Now, now, I did not sit down and, you**  
4 **know, log drafts, but just the short timeframe that**  
5 **was there I wrote something that was reformatted to**  
6 **put bullet numbers by it as shown here and this kind**  
7 **of became the draft.**

8 **MR. DWYER:** Barry, I don't think we  
9 actually -- I don't think any of the drafts of  
10 the declaration have been produced. I think  
11 we'd like to request those as responsive to  
12 whatever -- document's not in front of me. I'm  
13 fairly certain those were responsive to at  
14 least one of them.

15 **MR. GOHEEN:** If you can identify the  
16 document request, we'll be happy to take it  
17 under advisement.

18 **MR. DWYER:** All right. I'll get that to  
19 you as soon as we are done here.

20 **BY MR. DWYER:**

21 **Q.** Okay. Let us now move back to  
22 paragraph 14. Do you recall whether this paragraph  
23 was in the initial draft of the declaration?

24 **A. It may not have been or it may have been.**  
25 **I can tell you this comment. My knowledge is the**

27 (Pages 105 to 108)



Page 109

1 case comes from having accompanied my wife to White  
2 House Black Market, Chico's. I understand how our  
3 system works in that regard. I recognize that as an  
4 option.

5 So I could have made this statement on my  
6 own or could have incorporated the statement as a  
7 result of input from counsel. Specifically, my  
8 involvement here was I received a request, I turned  
9 something almost immediately because I didn't want  
10 it to have a life of its own. Turn it, close it  
11 out, got it issued.

12 Counsel basically put in appropriate  
13 format, made some edits and largely that became the  
14 final draft. My knowledge from this statement comes  
15 from my own shopping experience with my wife at  
16 White House Black Market, Chico's and Soma as well.  
17 I'm certain it's something counsel also highlighted  
18 to me as well, but it was something I previously  
19 already new. So I think I responded to your  
20 question.

21 Q. Did you conduct any factual investigation  
22 to determine whether your understanding based on  
23 your experience as someone who has shopped at  
24 Chico's and White House Black Market was, in fact,  
25 accurate?

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1 A. Well, based on my own personal experience  
2 knowing what the system does, I believe what I see  
3 in real life is accurate.

4 Q. When is the last time you shopped at White  
5 House Black Market?

6 A. It would have been pre-June.

7 Q. But sometime this year?

8 A. I don't recall the specifics.

9 Q. Was your -- did you -- what is the  
10 timeframe being referred to in this paragraph?

11 A. It's current.

12 Q. Current. Okay. Does the paragraph -- so  
13 the paragraph describes the current state of affairs  
14 at White House Black Market; is that an accurate  
15 statement?

16 A. Yes.

17 Q. So the paragraph is not intended to be  
18 discussing the state of affairs in early 2015 of  
19 White House Black Market?

20 A. Well, the -- it's the current state of  
21 affairs as it is today, as I understand them. Early  
22 2015 could have been pre-Fujitsu. That could have  
23 been the Epicor system. I would need to go back and  
24 look at what was occurring or somebody would need to  
25 go back and look what was occurring under the Epicor

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1 environment versus the Fujitsu environment. That's  
2 not my expertise.

3 Q. Does your personal knowledge as a shopper  
4 at White House Black Market extend to the period  
5 during which the purchases that are the subject of  
6 this litigation were made?

7 A. I can tell you during that timeframe I'm  
8 certain -- well, actually, I'm not certain. I don't  
9 know when I actually shopped during that timeframe.  
10 I don't know if I have direct knowledge if my  
11 statement is based on something that occurred during  
12 that window, that brief window, that three months.  
13 I can't speak to that. I tell you that is the way  
14 our system is as of today.

15 Q. But you don't have personal knowledge  
16 whether this was the state of affairs during the  
17 period in which the members, the people of the class  
18 made their purchase?

19 A. I do not have direct knowledge that would  
20 tell me that. I believe that to be the case. I  
21 don't believe there's been a change there since day  
22 one. The same system was universally for Chico's  
23 FAS.

24 Q. Did you undertake any factual  
25 investigation to verify that the statements in this

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1 paragraph were equally true of the period in which  
2 the members of the class made their purchases?

3 A. No.

4 Q. To whom would you have spoken to conduct  
5 that investigation?

6 A. Assuming I was going to make that  
7 investigation, again, I would have gone back to --  
8 in the context of this litigation I would have  
9 started with counsel. I personally would not have  
10 done any additional research. I can tell you my  
11 direct knowledge how the system works is consistent  
12 with this. Comments made to me by counsel is  
13 consistent with this.

14 But you would ultimately need to go back.  
15 I assume counsel would go back and talk with someone  
16 within our point-of-sale group team to confirm this  
17 was factual, but at the same point in time if you  
18 tomorrow went into a White House store, I think  
19 you'd find this to be factual.

20 Q. So I think -- what time is it now? It's  
21 12:20 your time. I would like to take -- I think  
22 I'm pretty close to done. I'd like to go back  
23 through my notes and just make sure I got everything  
24 else. Could we take a ten-minute break then  
25 reconvene?

28 (Pages 109 to 112)

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1 MR. GOHEEN: Of course.

2 THE VIDEOGRAPHER: Now going off the  
3 record at 12:21 p.m.  
4 (Off the record.)

5 THE VIDEOGRAPHER: We are now back on the  
6 record in the deposition of David Oliver at  
7 12:29 p.m.

8 BY MR. DWYER:

9 Q. Thank you. Okay. Thank you for a few  
10 more questions, and then we should be done,  
11 hopefully. Going back to your -- when we were  
12 discussing paragraph 1 of your declaration, you  
13 mentioned in your testimony with respect to the  
14 initial decision to start using the Fujitsu system  
15 that you were in those meetings.

16 Can you tell me what you provided in those  
17 meetings?

18 **A. I was a participant in terms of more of a**  
19 **passive listener to the presentations made by the**  
20 **vendors.**

21 Q. So to your present recollection you had no  
22 input in those --

23 **A. I was not providing -- in terms of the**  
24 **final decision, I was more informed versus**  
25 **consulted.**

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1 Q. And in terms of the meetings with Fujitsu  
2 personnel, did you have any input in those meetings?

3 **A. No. There were probably, I don't know, 20**  
4 **to 30 people in those meetings and I was just a**  
5 **participant sitting there listening to the**  
6 **presentation.**

7 Q. Do you remember --

8 **A. Listening to the presentation.**

9 Q. To your present recollection you didn't  
10 say anything in those meetings?

11 **A. I was not someone asking questions or**  
12 **making comment.**

13 Q. Outside the context of those meetings, did  
14 you provide any suggestions or advice to any people  
15 who were the decision makers?

16 **A. I don't recall making any comments in**  
17 **terms of the decision-making process. I was more**  
18 **focused on check the box, will the system feed into**  
19 **my ledger that I can record the information to my**  
20 **accounting system. That was my entire focus.**

21 Q. Okay. And around that time in the  
22 deposition you made a reference to the IT group?

23 **A. Yes.**

24 Q. Can you -- who is -- what is the IT group?

25 **A. Information technology, basically Nancy**

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1 **Holland falls under information technology**  
2 **department. You know, we have a -- our company has**  
3 **a CIO, Chief Information Officer, and under her**  
4 **pyramid is the point-of-sale and Nancy is down**  
5 **probably, I don't know, at least two to three layers**  
6 **in the organization.**

7 Q. And the IT group is a part of Chico's; is  
8 that correct?

9 **A. Yes. Part of the shared services. So the**  
10 **IT -- as part of shared service IT department we**  
11 **have, the IT services the entire organization, all**  
12 **brands.**

13 Q. Their paychecks are cut by Chico's; is  
14 that correct?

15 **A. Yes.**

16 Q. To your knowledge?

17 **A. Yes.**

18 Q. So I'm correct in understanding White  
19 House Black Market does not have its own independent  
20 IT people?

21 **A. Correct.**

22 Q. Okay. So I know that I asked in the  
23 beginning about -- at the beginning I asked you what  
24 documents you reviewed in preparing your declaration  
25 and I think that over the course of the deposition a

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1 few additional documents that weren't initially  
2 discussed may have been mentioned. So I just wanted  
3 to ask again other than the things that have been  
4 discussed so far, are there any additional documents  
5 that you reviewed in preparing your deposition that  
6 have not been mentioned so far in this deposition?

7 **A. I'm not recalling any at this time.**

8 Q. What documents did you review in preparing  
9 for this deposition?

10 **A. I looked at -- I would have referenced**  
11 **back -- well, we went through that earlier in the**  
12 **deposition. Various documents that I, as a result**  
13 **of my Google searches on companies --**

14 MR. GOHEEN: He said deposition.

15 **A. In preparing for this deposition.**

16 MR. GOHEEN: Right.

17 BY MR. DWYER:

18 Q. Yes.

19 **A. Preparing for this deposition I went back**  
20 **and read my declaration. That was it.**

21 Q. That was it?

22 **A. That was it.**

23 Q. You didn't look at any other documents to  
24 prepare for your deposition?

25 **A. No.**

29 (Pages 113 to 116)

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1 Q. Other than reviewing the declaration?

2 **A. This declaration was submitted. I came in**  
 3 **here cold and I'm talking to you. I did not review**  
 4 **any other documents.**

5 MR. DWYER: Okay. So that -- I think that  
 6 is it for questions for you, Mr. Oliver.  
 7 Barry, I just want to get on the record that  
 8 the documents, we think the draft -- the  
 9 document request, we think the drafts of  
 10 Mr. Oliver's declaration are responsive to our  
 11 Number 16, 18, 19, 25 and 31.

12 MR. GOHEEN: So any of those actually  
 13 specifically request documents related to  
 14 Mr. Oliver or drafts of his declaration, that's  
 15 what you're saying?

16 MR. DWYER: I don't think they  
 17 specifically name Mr. Oliver, but they are  
 18 Mr. Oliver's -- they are worded with sufficient  
 19 breadth that the draft of Mr. Oliver's  
 20 declaration would fall within the scope. We  
 21 think they should be produced.

22 MR. FRIEDMAN: What are they? What are  
 23 those?

24 MR. DWYER: All right. Sixteen, all  
 25 documents pertaining to the software and

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1 to use for evidence, demonstrative, impeachment  
 2 or rebuttal purposes at any trial or other  
 3 proceeding in this lawsuit including but not  
 4 limited to any hearing concerning class  
 5 certification.

6 MR. GOHEEN: Hold on. You're saying we  
 7 would need to produce a draft of something that  
 8 actually was not final in response to 25,  
 9 something we might use in a hearing? Come on.  
 10 Next?

11 MR. DWYER: I will note I didn't get  
 12 responsive to 18 and 19 --

13 THE COURT REPORTER: I can only get one  
 14 speaking at a time.

15 MR. GOHEEN: You did get a response. I  
 16 said no to each of those. None of those are  
 17 remotely responsive even if they were  
 18 responsive. I can't manage they would be  
 19 privileged, so they're not going to be produced  
 20 but if you want to --

21 MR. DWYER: Disagreement on this we can  
 22 take to court.

23 MR. GOHEEN: If you really want to go to  
 24 the court on a draft declaration, you just go  
 25 right ahead.

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1 equipment used to gather and store White House  
 2 Black Market customer information.

3 MR. GOHEEN: Not close.

4 MR. DWYER: Any time since May 16, 2010.  
 5 Including but not limited to a copy of each  
 6 contract governing the purchase, lease or use  
 7 of the software equipment and the user manuals  
 8 and other documents that identify the software  
 9 and equipment and discuss their capability,  
 10 operation, programming and maintenance.

11 MR. GOHEEN: Nowhere close. Try again.

12 MR. DWYER: Well, I respectfully disagree  
 13 with you, Barry, but we don't have to have this  
 14 fight here. All documents in 18: All  
 15 documents that discuss or reveal White House  
 16 Black Market policy, practices or procedures  
 17 with respect to print accuracy for customers at  
 18 White House Black Market locations in the U.S.

19 Number 19: All documents and files  
 20 maintained by you as far as fact compliance.  
 21 Point of sales hardware flash software,  
 22 procedures for handling and/or your procedures  
 23 for retaining customer data related to credit  
 24 and debit card transactions.

25 Number 25: All documents Defendants plan

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1 MR. DWYER: Well, do you want me to read  
 2 31 into the record?

3 MR. GOHEEN: Please do. Yes.

4 MR. DWYER: Thirty-one: All other  
 5 documents not requested above that contain  
 6 information responsive to Plaintiffs'  
 7 interrogatories and other information relevant  
 8 to this matter.

9 MR. GOHEEN: Yeah, that's not happening.

10 MR. DWYER: That's that. The other  
 11 outstanding issue is that I was trying to get  
 12 through this expeditiously to get you home,  
 13 Barry, we obviously take issue with a large  
 14 number of the privilege objections you made in  
 15 this deposition.

16 We are giving consideration to raise that  
 17 issue to the court. We think a number of the  
 18 objections you raised aren't actually  
 19 appropriate privilege objections. We think  
 20 Mr. Oliver should be compelled to offer  
 21 testimony in those subjects.

22 MR. GOHEEN: What are those?

23 MR. DWYER: Sorry?

24 MR. GOHEEN: What are those?

25 MR. DWYER: What? For example, every time

30 (Pages 117 to 120)

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1 you directed him not to answer about the  
2 information you provided to him or the basis  
3 for how certain statements got in the  
4 declaration. I think those are all not  
5 appropriate implications of either  
6 attorney-client privilege or the work product  
7 doctrine.

8 MR. GOHEEN: I didn't direct him not to  
9 answer.

10 MR. DWYER: You had --

11 MR. GOHEEN: There were only two times.

12 THE COURT REPORTER: I can only get one at  
13 a time.

14 MR. GOHEEN: I'm the one here. I'm the  
15 one that is going to talk. There were only two  
16 times I directed him not to answer. I gave an  
17 instruction and said don't reveal  
18 attorney-client communication. He followed the  
19 instruction. I think there were maybe only two  
20 times I said don't answer the question. So I  
21 don't know what you're talking about.

22 MR. DWYER: All right. Well, we can hash  
23 that out again in front of the court.

24 MR. GOHEEN: No, we won't.

25 MR. DWYER: -- lengthy prelude it is my

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1 cetera.

2 In federal rules, I get seven hours. I  
3 deposed this gentleman for less than three. So  
4 we have plenty of time left and I'm simply  
5 saying I reserve the right after we hash it out  
6 in front of the court about the scope of the  
7 privilege, what you can and cannot instruct him  
8 not to say on that basis, I reserve the right  
9 if you think it's appropriate to schedule him  
10 up for the second half of this deposition.

11 I want to do that in a way that's  
12 convenient for everyone, including Mr. Oliver  
13 in particular. But I don't want there to be  
14 any confusion later about what we do or do not  
15 intend to do and where things currently stand.  
16 Again, if you don't think that's appropriate,  
17 we can fight about that in front of the court.

18 MR. GOHEEN: I can tell you're very -- you  
19 have a great affinity for going to court. I  
20 get it. My question was a simple one, other  
21 than privilege issues you've raised are you  
22 done with your examination of Mr. Oliver, yes  
23 or no. It's that simple, yes or no.

24 MR. DWYER: Based on my current  
25 understanding of the facts and the obvious

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1 intention to suspend not close this deposition.  
2 We're obviously well under seven hours. If in  
3 fact we prevail on some privilege issues, I'd  
4 like to get Mr. Oliver back to question him on  
5 those subjects. I just want to advise you of  
6 that fact.

7 MR. GOHEEN: Thank you for the advice.  
8 Let me make my own statement for the record:  
9 Are you saying you have completed your  
10 examination of Mr. Oliver with the exception of  
11 those very, very few, which I think to be not  
12 more than two or three questions where he was  
13 instructed not to answer; is that correct?

14 MR. DWYER: I'm not saying that. I'm  
15 saying that I think there are bona fide dispute  
16 about the scope of the attorney-client  
17 privilege and about what subject he should or  
18 should not answer.

19 I don't think the fact -- whether or not  
20 you use the magic words I direct you not to  
21 answer is not controlling as to which subject I  
22 intend to reserve the right to redepose him on.  
23 You obviously if you want to object again in  
24 any subsequent deposition we can do that, go  
25 back to the court again if we have to, et

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1 caveat there is a -- there are a lot of  
2 documents your client didn't get produced  
3 including the draft of Mr. Oliver's  
4 declaration.

5 MR. GOHEEN: Which you're not going to  
6 get.

7 MR. DWYER: I'm not presently aware of any  
8 additional subjects on which I'd like to depose  
9 Mr. Oliver, other than the materials in which  
10 he did not answer or gave answers because of  
11 your privilege instruction.

12 MR. GOHEEN: Thank you.

13 MR. DWYER: But obviously when you produce  
14 documents to us and we get Mr. Oliver's  
15 declaration --

16 MR. GOHEEN: You're not going to get them.  
17 Okay. You're not going to get the draft  
18 declaration. So just stop it. Okay. It's a  
19 draft. It's not relevant to any issue in the  
20 case. Those are not produced routinely. You  
21 know that. I don't want to hear draft  
22 declaration again.

23 Now, let me say a couple things on the  
24 record. First, we asked this be moved up from  
25 10:00 to 9:00. You refused to do that. It was

31 (Pages 121 to 124)





## Dwyer, Angus

---

**From:** Love, Tony <TLove@KSLAW.com>  
**Sent:** Wednesday, July 12, 2017 4:37 PM  
**To:** Dwyer, Angus; Goheen, Barry  
**Cc:** Lamer, Bryant; mhillicki@keoghllaw.com; keith@keoghllaw.com; Vile, Leah  
**Subject:** RE: Altman v WHBM - Deposition Notice for David M. Oliver

Angus: we have consulted with the client on this issue further. WHBM states that it would need to take three of its very busy employees off of their regular job assignments on a half-time basis for 6 to 8 weeks even begin to extract this data. Even then, there is no guarantee that the data would be completely accurate. Given this fact, it is WHBM's position that the request is unduly burdensome and disproportionate to the needs of the case.

Tony Love  
King & Spalding LLP  
1180 Peachtree Street  
Atlanta, Georgia 30309  
(404) 215-5913 (phone)  
(404) 572-5100 (fax)

**From:** Dwyer, Angus [mailto:adwyer@spencerfane.com]  
**Sent:** Wednesday, July 12, 2017 4:59 PM  
**To:** Love, Tony; Goheen, Barry  
**Cc:** Lamer, Bryant; mhillicki@keoghllaw.com; keith@keoghllaw.com; Vile, Leah  
**Subject:** RE: Altman v WHBM - Deposition Notice for David M. Oliver

Tony and Barry:

It has now been two weeks. Can you please respond to my query regarding production of e-mailed receipts?

Similarly, both your opposition brief and Mr. Oliver's declaration contain references to e-mailed receipts. If any receipts were in fact e-mailed, then those e-mails presumably exist on a server somewhere, assuming they have not been spoliated. At a minimum, there must be some kind of data confirming that such e-mails were actually sent and to what e-mail address. Such materials would be responsive to, *inter alia*, Plaintiff's Document Requests Nos. 2, 3, 6, 23 and 31. Please produce them as soon as possible and, in any event, by not later than July 7.

Best,  
Angus

Angus Dwyer Attorney at Law  
Spencer Fane LLP

1000 Walnut, Suite 1400 | Kansas City, MO  
64106  
O 816.292.8338  
adwyer@spencerfane.com |  
spencerfane.com

**From:** Dwyer, Angus  
**Sent:** Thursday, July 6, 2017 3:33 PM  
**To:** 'Love, Tony'; 'Goheen, Barry'



**Cc:** Lamer, Bryant; 'mhilicki@keoghlaw.com'; 'keith@keoghlaw.com'; Vile, Leah

**Subject:** RE: Altman v WHBM - Deposition Notice for David M. Oliver

Any word on the e-mailed receipts?

Also: do we have a location for Mr. Oliver's deposition? I'd like to get a court reporter lined up and start coordinating with the technical staff at the site.

Best,  
Angus

**Angus Dwyer** Attorney at Law  
Spencer Fane LLP

1000 Walnut, Suite 1400 | Kansas City, MO  
64106  
O 816.292.8338  
adwyer@spencerfane.com |  
spencerfane.com

**From:** Dwyer, Angus  
**Sent:** Wednesday, July 5, 2017 3:14 PM  
**To:** 'Love, Tony'; Goheen, Barry  
**Cc:** Lamer, Bryant; [mhilicki@keoghlaw.com](mailto:mhilicki@keoghlaw.com); [keith@keoghlaw.com](mailto:keith@keoghlaw.com); Vile, Leah  
**Subject:** RE: Altman v WHBM - Deposition Notice for David M. Oliver

Tony:

Now that we've resolved the issue of Mr. Oliver's deposition, I'd like to return to the second subject of my initial e-mail, relating to the production of e-mails documenting e-mailed receipts. When can we expect to receive those?

Best,  
Angus

**Angus Dwyer** Attorney at Law  
Spencer Fane LLP

1000 Walnut, Suite 1400 | Kansas City, MO  
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O 816.292.8338  
adwyer@spencerfane.com |  
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**From:** Love, Tony [<mailto:TLove@KSLAW.com>]  
**Sent:** Friday, June 30, 2017 12:37 PM  
**To:** Dwyer, Angus; Goheen, Barry  
**Cc:** Lamer, Bryant; [mhilicki@keoghlaw.com](mailto:mhilicki@keoghlaw.com); [keith@keoghlaw.com](mailto:keith@keoghlaw.com); Vile, Leah  
**Subject:** RE: Altman v WHBM - Deposition Notice for David M. Oliver

Yes

Tony Love  
King & Spalding LLP  
1180 Peachtree Street  
Atlanta, Georgia 30309

(404) 215-5913 (phone)

(404) 572-5100 (fax)

**From:** Dwyer, Angus [<mailto:adwyer@spencerfane.com>]

**Sent:** Friday, June 30, 2017 1:36 PM

**To:** Love, Tony; Goheen, Barry

**Cc:** Lamer, Bryant; [mhilicki@keoghllaw.com](mailto:mhilicki@keoghllaw.com); [keith@keoghllaw.com](mailto:keith@keoghllaw.com); Vile, Leah

**Subject:** RE: Altman v WHBM - Deposition Notice for David M. Oliver

Can I represent to the court that you would be willing to consent to an additional two-days on our end – i.e., an 8/3 deadline for our reply?

**Angus Dwyer** Attorney at Law  
Spencer Fane LLP

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**From:** Love, Tony [<mailto:TLove@KSLAW.com>]

**Sent:** Friday, June 30, 2017 12:34 PM

**To:** Dwyer, Angus; Goheen, Barry

**Cc:** Lamer, Bryant; [mhilicki@keoghllaw.com](mailto:mhilicki@keoghllaw.com); [keith@keoghllaw.com](mailto:keith@keoghllaw.com); Vile, Leah

**Subject:** RE: Altman v WHBM - Deposition Notice for David M. Oliver

Angus: we will actually need to move the depo to July 20. Apologies for the change, but wanted to let you know in case you need to include with your conversation with the court about moving the reply deadline.

Thanks,

Tony Love  
King & Spalding LLP  
1180 Peachtree Street  
Atlanta, Georgia 30309  
(404) 215-5913 (phone)  
(404) 572-5100 (fax)

**From:** Dwyer, Angus [<mailto:adwyer@spencerfane.com>]

**Sent:** Thursday, June 29, 2017 12:30 PM

**To:** Love, Tony; Goheen, Barry

**Cc:** Lamer, Bryant; [mhilicki@keoghllaw.com](mailto:mhilicki@keoghllaw.com); [keith@keoghllaw.com](mailto:keith@keoghllaw.com); Vile, Leah

**Subject:** RE: Altman v WHBM - Deposition Notice for David M. Oliver

Tony:

A deposition on July 18 is too close to our July 21 briefing deadline, but we will accommodate you if WHBM agrees to move our class cert reply deadline to August 1 and the Court allows it. Let me know if you will agree to the move and I will check with the Court to see if the proposed new reply deadline is acceptable.

Best,  
Angus

**Angus Dwyer** Attorney at Law  
Spencer Fane LLP



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**From:** Love, Tony [<mailto:TLove@KSLAW.com>]  
**Sent:** Thursday, June 29, 2017 9:54 AM  
**To:** Dwyer, Angus; Goheen, Barry  
**Cc:** Lamer, Bryant; [mhilicki@keoghlaw.com](mailto:mhilicki@keoghlaw.com); [keith@keoghlaw.com](mailto:keith@keoghlaw.com); Vile, Leah  
**Subject:** RE: Altman v WHBM - Deposition Notice for David M. Oliver

Angus: the earliest Mr. Oliver is available is 7/18. We will make him available in Ft. Myers, FL, beginning at 9:30 a.m. EST. We are working on the location and will follow up with that.

Thanks,

Tony Love  
King & Spalding LLP  
1180 Peachtree Street  
Atlanta, Georgia 30309  
(404) 215-5913 (phone)  
(404) 572-5100 (fax)

**From:** Dwyer, Angus [<mailto:adwyer@spencerfane.com>]  
**Sent:** Wednesday, June 28, 2017 12:00 AM  
**To:** Goheen, Barry; Love, Tony  
**Cc:** Lamer, Bryant; [mhilicki@keoghlaw.com](mailto:mhilicki@keoghlaw.com); [keith@keoghlaw.com](mailto:keith@keoghlaw.com); Vile, Leah  
**Subject:** Altman v WHBM - Deposition Notice for David M. Oliver

Gentlemen:

Attached please find a deposition notice for David M. Oliver. Since he was not previously identified as a person having relevant knowledge on either your Rule 26 disclosures or your interrogatory responses, we did not realize we needed to take his deposition until you submitted your opposition to the class certification motion. I have the deposition set for the offices of our local counsel but, if you prefer, we can do it at your offices instead or at some other location of your preference. I will be participating by telephone. The deposition should only take a few hours. If you have a reasonable alternative date besides July 7 that you want to propose I am happy to entertain it but we feel strongly that this deposition should happen in the relatively near future.

Similarly, both your opposition brief and Mr. Oliver's declaration contain references to e-mailed receipts. If any receipts were in fact e-mailed, then those e-mails presumably exist on a server somewhere, assuming they have not been spoliated. At a minimum, there must be some kind of data confirming that such e-mails were actually sent and to what e-mail address. Such materials would be responsive to, *inter alia*, Plaintiff's Document Requests Nos. 2, 3, 6, 23 and 31. Please produce them as soon as possible and, in any event, by not later than July 7.

Best,  
Angus

Angus Dwyer Attorney at  
Law  
Spencer Fane LLP

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